

THE ESTABLISHMENT OF THE EUROPEAN COMMISSION

THE BUILDING OF ADMINISTRATIVE STRUCTURES WITHIN AN
ORGANISATION OF POLITICAL LEADERSHIP

by

Henriette C. Piene

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Abstract

To the study of the establishment of the European Commission in 1958 and its administrative structures, a "new" dimension can be said to have been added with material that has become available with the opening of the Historical Archives of the European Communities. Through this material one has been able to study from first-hand sources influences and aspects of the setting-up of the European Commission which has hopefully cast new light on this process. An interview with former Secretary-General of the Commission, Emile Noël, has given first-hand experiences of the work of the early Commission from a personal source.

From an organisational and administrative perspective, the European Commission has several characteristics, making it unique, and therefore difficult to classify into any existing group of organisation, whether of national or multinational type. Already early on these were questions which led to publications that have been of considerable relevance to students of the European Commission to this day. The "spill-over" effect of the neofunctionalist theory was used by Leon N. Lindberg to explain the development from the High Authority of the ECSC to the Commission of the EEC, and hopefully further on into the future. David Coombes concentrated more on the administrative structures in an attempt to fit the Commission into Max Weber's theory on bureaucracy. Nonetheless, the four functions he assigned to the Commission and its administration have been useful ever since. Jean Siotis dismissed the study of the Commission and the European Communities as a new phenomenon, claiming it to be an expression of regionalism, and not a new type of "European science". He attempted to fit the European Commission into the category of European Secretariats of which there had already existed others before it.

Approaching the study of the European Commission, one cannot avoid the High Authority. This was as close as one could get to a predecessor to the Commission. Their differences, however, were partly due to the scope of the High Authority, which covered a much smaller area of society, dealing only within the industries of coal and steel. Secondly, the Treaties of the ECSC and EEC approached the legislative process rather differently. Within the ECSC, legislative powers were given to the High Authority alone, whereas in the EEC, this was shared between the European Commission and the Council of Ministers, making the EEC less "supranational". Furthermore, differences between the two executive bodies can be found in the characters of its two Presidents, Jean Monnet and Walter Hallstein respectively. Monnet approached the setting-up of the High Authority in a minimalist way, only expanding and developing its administration according to needs. Hallstein believed in developing administrative structures first, for then to be able to concentrate on the developing of policies. It was also in this way that the Commission was able to perform its most characteristic, and unique feature, that of a political leadership. The influence of President Hallstein was here to prove considerable, together with the rest of the College of Commissioners, operating in a strictly collegiate and independent manner. Particularly during the Free Trade Area negotiations between the Six and the rest of the OEEC, the Commission showed its ability to take political initiatives. The Free Trade Area negotiations had started in an intergovernmental fashion in 1956, two years before the EEC and the Commission came into operation. Nevertheless, the Commission proved capable of entering the negotiations half way through, seeking to carry them on as the single voice of the Six.

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*"On the morning of August 10, 1952, Europe came to Luxembourg."
Monnet (1978) p. 372.*

CHAPTER I

INTRODUCTION

*"Les institutions sont plus importantes que les hommes. Mais seuls les hommes, quand ils en ont la force, peuvent transformer et enrichir les choses que les institutions transmettent ensuite aux générations successives."*¹

1. THE STUDY OF THE EUROPEAN COMMISSION

1.1 Reasons for the "new" interest in the Commission

Jean Monnet, the "founding father" of the European Communities, stated in connection with the setting-up of the European Coal and Steel Community (ECSC) that "Europe would be created by people but that it would not survive unless it was firmly anchored in solid institutions".² His approach to the institutions of the ECSC was to be different from the institutions of the later European Economic Community (EEC). The institutional framework, on the other hand, was more or less identical. However, the executive institutions of the two Communities, the High Authority of the ECSC and the Commission of the EEC, had a number of important differences. These differences were partly due to the general mood in the member States towards supranationalism and to the scope of operation, but maybe even more importantly due to the different ideas and cultures of their two founding leaders, Jean Monnet and Walter Hallstein. Jean Monnet was a Frenchman and very much an idealist. He was concerned with a big idea and the larger picture. This was an idea of countries working together for a common cause, rather than fighting against each other in

¹ Jean Monnet, *Clefs pour l'Action*. "Institutions are more important than people. But only people, with the necessary strength/power, can transform and enrich those elements which the institutions pass on to succeeding generations." Own free translation.

² Office for Official Publications of the European Communities (1990) *A Tribute to Emile Noël, Secretary-General of the European Commission from 1958 to 1987*, p. 36.

devastating wars. The ECSC and the High Authority were set up with an overall purpose of keeping Germany and France at peace with each other, and Germany at peace with the rest of Europe, and hence the world.³ By the time the EEC was set up in 1958, many dramatic events had changed the ideas and needs as they were seen by the Six of the ECSC and their national politicians. After the idealist boost given by the setting-up of the High Authority, a dramatic set-back came with the failure of the European Defence Community (EDC) two years later. Other events on the world scene, however, made the Six realize the need for a further and more far-reaching integration. By the time of the setting-up of the EEC, the sector integration "invented" and introduced by Jean Monnet had lost its importance in favour of a general economic integration, involving all sectors of society. Together with the scepticism of national politicians towards supranationalism, this would necessarily produce a different kind of executive institution.

This thesis is not meant to be a general study of Europe of the 1950s, or an analysis of why the European Communities were set up. Many studies of that kind have been made already. Instead, the intention has been to make a study of how the European Commission was set up and organised, and which factors influenced this process. The study will concentrate on how the Commission, as a College of Commissioners and as administration, came into being and how its founding personalities came to inspire it into what it is today. If we take some time to analyse and reflect over the words by Jean Monnet quoted above, it seems clear that institutions are set up according to ideas and needs as seen by the human resources available. Furthermore, the institution will survive into the future only if made solid, whether this means "supranational", "independent", "bureaucratic" or "political", as some possible characteristics. These characteristics might represent either the High Authority or the European Commission, or both, at some point in their existence.

³ Unless otherwise specified, Germany will be used throughout the thesis meaning West Germany or the Federal Republic of Germany. If other terms are used this will be in quotations by other authors that will have to be kept in their original form.

As will be shown, Jean Monnet, the pioneer, believed in a minimalist administration where no person or idea would be lost in "heavy" bureaucratic structures, and therefore wanted to see all levels involved in the decision-making process. If the administration needed to develop into something bigger, it would when the time was right. Some years later Walter Hallstein brought his German bureaucratic traditions with him as the President of the European Commission. After having played a part in the creation of the German Foreign Office, the *Auswärtiges Amt*, he brought with him a highly hierarchical administrative tradition into the European Commission. Unlike Jean Monnet who intended to develop the administration of the High Authority according to needs, Hallstein, in the same fashion as Monnet, believed in setting up the structure straight away for later to "fill the holes".⁴ Nevertheless, he could not lay enough stress on the importance of the Commission establishing its independence towards the member States. Already in 1950 Hallstein declared that "The German Government reaffirms that the importance of the Schuman Plan is above all political. In this context, economic problems, substantial as they may be, are secondary: solutions to them will always be found."⁵

The political aspect was very important both to the High Authority as well as to the European Commission. How political the two institutions have been, and the latter in particular, has nevertheless been up to historians and political scientists of more recent times to analyse. The Commission was to become restricted in its actions by national governments not willing to see their "sovereignty" handed over to the new Community of overall economic integration. In the early years, however, it still represented the optimism created by the "*rélanche européenne*" which had brought the Messina Conference in 1955, leading to the two Treaties of Rome to be signed on 27 March 1957. During the first years of existence of the European

⁴ Emile Noël, *Temoignage: L'Administration de la Communauté Européenne dans la retrospective d'un ancien Haut Fonctionnaire*. In: Yearbook of European Administrative History 1992, pp. 157-158. "*Pour la Commission, l'idée de Hallstein était d'établir tout de suite la structure et de garnir ensuite les cases.*"

⁵ Monnet (1978) *Memoirs*, p. 328.

Commission, as will be shown, many policies had to be set out as part of the putting into effect of the Treaty of Rome. Furthermore, there were other external factors influencing the Commission to act in a political way. The first was the Free Trade Area negotiations which were already under way as the Commission came into being. Later there was the Kennedy Round of the GATT where the Commission came to play an important part.

1.2 Material from the Historical Archives of the European Commission in Brussels and Florence

In this study of the period of the creation of the European Commission, the opening of the Historical Archives of the European Communities to the public has been of great help in providing a fuller picture of the actual events. All classified documents issued by the institutions of the European Communities are being kept in their original status according to a 30-year rule. Theoretically, that means that all documents at least up to 1965 are open for the public to read and study. This can be done at the Historical Archives in Brussels or at the European University Institute in Florence. In addition, each member State is eligible for three copies on request. The period just mentioned includes most of the history of the High Authority of the ECSC, the early history of the European Commission - the period of shaping new administrative structures, as well as the European Free Trade Area negotiations between the Six and the rest of the OEEC. The material to be found in the Commission Archives are letters, drafts and documents, as well as minutes from internal meetings of the Commission and between the Commission and other institutions. They give an impression of how business was conducted and who conducted it, and not least at what speed things happened.

In addition to documents from the European institutions, the archives in Florence also include a collection of interviews with several of the pioneers from both the High Authority and the European Communities. Their personal accounts of the period give valuable information to a student of the early European Communities

- opinions that will not always be found in any book. Although many of these interviews were conducted as much as thirty years later or more, the views they express will be free from any political or confidential restrictions, and give totally personal impressions. Characteristically, these interviews give an impression of a group of people who were utterly enthusiastic about, and believed in, the integration process they were part of.

As part of this research, a visit has also been made to the Archives of the Ministry of Foreign Affairs in Paris. This has been most useful for getting an impression of how the setting-up of the European Communities, as well as the Free Trade Area negotiations, was viewed and discussed in the French Assemblée Nationale. France was important on both of these occasions in many ways. She had provided the political initiative behind the ECSC in 1950, and in 1954 she prevented the European Defence Community and the European Political Community from being set up. It was clear that there was not going to be another European Community without her consent and complete participation. Within France there were strong divisions between the "Europeans" on the one side and the more nationalist groups on the other. Negotiations always had to be conducted with this in mind to satisfy the many powerful groups at home and at the same time seek not to interrupt the valuable process that had been started in 1950 with the Schuman Declaration. To the five other founding states it was equally important to keep France on their side if the overriding aim of peace in Europe was to be fulfilled and the European Communities were to carry any real weight on the world scene. The impression one gets from studying these documents is that, despite differences, France was preparing herself considerably at home to handle the EEC when it was set up. During 1957, in the months immediately before and after the signing of the Treaty of Rome, discussions in the French Assemblée Nationale were very much concerned with the proposed Free Trade Area with the United Kingdom and the rest of the OEEC countries.

1.3 Interview with Emile Noël on 12 December 1994 in Paris

Emile Noël was appointed as the first Executive Secretary of the European Commission in March 1958, a position in which he stayed for nearly thirty years, until 1987.⁶ He observed at close hand how the Commission and its administration took shape from the start and how it developed and adapted to the many changes that occurred since. Furthermore, it is clear that he not only observed at first hand, but also took part in these developments himself in a highly influential manner.

The characteristic ascribed to the European Commission during its very early years was that of an organisation consisting of the "hard core" of the so-called "Good Europeans" from the six member States. There existed a real feeling of teamwork and team spirit which came about with a general feeling of accomplishing substantial achievements. The kind of dedication given by the staff at the time was demonstrated by the fact that such elements as payment came secondary to any other task to be fulfilled. Emile Noël further gives the impression of this team of "Europeans" being highly influenced by the leadership of the Commission President, Walter Hallstein, who was very much in charge, leading the way on the setting-up of administrative structures. Neither was his leadership disputed by any of his colleagues among the College of Commissioners. This period, as Noël claimed, demonstrated President Hallstein executing a political leadership of the Commission, conducting real political discussions among the Commissioners, functioning to a certain degree as the first European "politicians". One reason, it has to be mentioned, why this was possible at the time, and maybe less possible later on, was the fact that there was little if any executive and implementative work to do. In relation to the Staff Regulations for the Commission, which came into force in 1962, Emile Noël gave the impression of an organisation which, during the four years prior, had to a certain extent even benefitted from being without too many

⁶ With the Merger Treaty of 1967 the Executive Secretariat changed the name to the Secretariat General, and the Executive Secretary becoming the Secretary General. In this thesis, however, the appropriate name will be Executive Secretary.

regulations of such kind. In this way one could be certain that those who did come to work for the European Commission in 1958 were truly devoted to the cause of European integration, feeling they were doing something useful for the common future of the continent. For these reasons they were willing to take risks, in a job without status - at least not at that time, with no contract and no guarantees. It also made it possible for the Commission to develop in its own speed and into its own shape without too many rules and regulations made beforehand. Furthermore, the interview with Emile Noël gave the impression of the European Commission as an organisation which, given the time it was set up and the people involved, did not have the opportunity to develop in any other direction.

The teamwork that existed from the start in 1958 throughout the Hallstein presidency, in particular until around 1965, will be considered as rather unique in the history of the European Commission.⁷ Emile Noël put great importance in this teamwork, which he claims to have been totally decisive for the development ahead. Among the personalities involved, Emile Noël could tell of the special sense of achievement that was felt, and of the feeling of doing something quite extraordinary and very important. Nevertheless, careful assumptions were also made of a "heavy" and bureaucratic administration which was established early in 1958 and resulted in a certain lack of internal cooperation within the Commission. To face the immediate tasks, such as the ongoing Free Trade Area negotiations, the building of common

⁷ One member of the Commission, Robert Marjolin from France, has characterised the period between 1958 and 1965 as the "honeymoon" where there was nothing but progress and favourable circumstances. As he put it in his memoirs: "the proposals made and put before the Council of Ministers were certain to get a favourable reception or, in any case not encounter an outright veto which would have left no room for negotiations". Robert Marjolin (1989) *Memoirs 1911-86: Architect of European Unity* (London: Weidenfeld and Nicolson). The end of the "honeymoon" came with the "empty chair" crisis when France withdrew her representatives to the EEC, claiming that Hallstein and the Commission had bypassed the opinions of the member States regarding the "introduction of agricultural levies, the introduction of the principle of 'own resources' and a greater role for the European Parliament". Geoffrey Edwards and David Spence (eds.) (1994) *The European Commission* (Essex: Longman Group Ltd.), p. 5.

policies and the setting-up of the Common Market, President Hallstein had taken great care in recruiting officials of the highest standard to the administration already during the three first months of 1958. It was during this period that Emile Noël had been appointed as Executive Secretary of the European Commission. One of his main tasks was in trying to develop better links between the Directorates General as it soon became apparent that horizontal links between these were few already from the start. Within the administration that appeared, the weekly meeting of the nine Commissioners could not inspire similar behaviour further down in the system. This seems to have been an area where Emile Noël was able to influence the system to become less rigid.

To Emile Noël, all the different material that has been written about the Commission and the various ways of identifying its many roles, seemed to be of little concern. For someone who has seen the developments and the roles performed at close hand, this is not such an unusual reaction. Furthermore, one could get the feeling that the material could often reflect a "wrong", or misleading, picture. Observers from the outside and "observers" like himself from the inside could possibly put weight on different elements in the system. It seems from Emile Noël's comments that, in his views, the political function of the Commission, during its early years in particular, was the one of greatest importance and significance.

Another aspect which came out of the interview with Emile Noël was the feeling that many elements such as the inter-executive groups and the "Meeting of the Presidents" either had not existed at all or only happened on few occasions. This might serve as an example of how theory and practice does not always go hand in hand. The fact that such elements did exist, at least on paper, should be quite clear as we have seen evidence of this, not only in the literature, but also in the archive material.⁸ Whether they worked in reality, and served a purpose, will be another

⁸ See for example Communauté Economique Européenne, Commission, Secrétariat. 40/58-F. Bruxelles. le 5 mars 1958. Confidentiel. *"Répartition et Composition des Groupes"*. See below Chapter IV. 3.1.

discussion. It is in such situations that a personal account of the actual story will make the picture more complete, adding to what information one might find in archive material.

Even if people may have a tendency to play down their own role and importance in any given situation, it has been of the greatest interest and significance to the writing of this thesis to have listened to Emile Noël tell his part of the story in his own words. By listening carefully one will understand what he has thought to be the greatest achievements and where he has placed his loyalties. The establishing of the European Commission in 1958 seems today a long time ago, and Emile Noël has served this organisation under several Commission Presidents. Nevertheless, a great admiration for what Walter Hallstein achieved during his time as President of the Commission still exists. Whatever imperfections the Commission administration might have seen, the fact that it was set up, and still exists in the same form, must be regarded as an historical event. Its powers, we will see, should normally be considered as too important for nation-states to want to hand over to other "supranational" organisations.

For these reasons, one might think, people like Emile Noël were, and still are, unwilling to see what might seem like details in the larger picture as having caused any problems to the early European Commission. This could be whether there were problems with national enclaves, or the fact that there existed no Staff Regulations until 1962. That the European Commission was able to take political, as well as administrative, decisions of great significance as early as during its first year in operation must be given a greater importance within the historical picture. What seems to have been established through the interview with Emile Noël is that at least during its first few years in operation, which in this case would be from 1958 until 1962-63, the European Commission functioned as a collegiate body, achieving a real spirit of teamwork among its members. Furthermore, President Hallstein seems to have performed a real political leadership role, starting on the first day. One way he did this was in the recruitment of personnel to the Commission

administration. He personally interviewed most of them, certainly all the higher officials for positions as Directors General and Directors, and his personal "green light" was needed in every case. Another way of executing a political leadership was in the establishment of the administrative structures of the Commission which, in the view of Emile Noël, was set up according to decisions taken by President Hallstein, only with the approval of the other eight Commissioners. The result, which Emile Noël carefully has suggested might have become rather administratively "heavy", must nevertheless be regarded as a political decision taken by President Hallstein. From Emile Noël's description of the Commission administration which early became rather hierarchical, with little or no horizontal communication, it could in many ways seem to fit with Max Weber's theory on bureaucracy, which has been used by David Coombes in his study on the functions of the European Commission.

The value of this interview with Emile Noël has been as a first hand impression from someone who was present from the start, in the middle of these historical developments. As the Executive Secretary, however, he was also situated a bit on the side, almost as an observer of his own organisation, something which might give a wider picture. Views expressed during the interview will be used throughout Chapter IV in particular, as well as Chapter V, and always with a reference in the footnotes.

2. EARLY STUDIES OF THE ROLE OF THE EUROPEAN COMMISSION

The following section of the Introduction will present the three main authors used in this thesis, and their three different approaches to the study of the early European Commission. Despite presenting highly different analyses, they have one important factor in common: the fact that their work was published relatively soon after the setting-up of the Commission and that they have remained among the main literature on the organisation and functions of the Commission to this day.

Leon N. Lindberg, an American scholar, was, together with his fellow countryman Ernst B. Haas,⁹ important and influential to the neofunctionalist theory of integration. The fact that they were both Americans also made them see the processes that took place on the European continent with slightly different eyes. Lindberg's book *The Political Dynamics of European Economic Integration* was the first thorough work on the European Commission. It was published only five years after it was set up, and to a certain extent one could say that Lindberg conceptualized the Commission in a way which made it grow along the lines which he envisaged. One of the reasons for Lindberg's interest in the EEC and the European Commission was the political integration as a process "whereby a number of nation-states come to construct a single political community".¹⁰ For such a system to exist, Lindberg insisted on the importance of institutions and their decision-making procedures. The European Commission had been given extensive powers to exercise, including its right and obligation to propose legislation to the Council of Ministers. However, he is generally not the one to present explanations or solutions, but rather to construct arrangements for the characteristics of integration. As another writer on European integration, Paul Taylor, has put it: "The comparison rather than the explanation of integration process has become the new goal of the Neofunctionalist theorists".¹¹

David Coombes, at the time a British Professor from the University of Reading, made a study of the European Commission for Political and Economic Planning (PEP), published in 1970. This was a more practical, rather than theoretical study. His use of Weber's theories of bureaucracy, however, was an attempt to classify the Commission as a type of organisation that was already known

⁹ Ernst B. Haas' great work *The Uniting of Europe. Political, Social and Economic Forces 1950-57* (1958) was, however, of an earlier date, written mainly about the ECSC.

¹⁰ Lindberg (1963) *The Political Dynamics of European Economics Integration*, p. vii.

¹¹ Taylor (1971) *International Co-operation Today*, p. 74.

to the reader. As the European Commission was a new type of organisation which had not been seen before, there was a great need to try and define it and put a name to it. Nevertheless, as it was a fast growing organisation, not only concerning its number of staff but also its tasks, it was a useful study to see it in relation with theories of bureaucracy. This would perhaps prove to some that the Commission had become too big a "machine" which had lost all its flexibility and inventiveness. To others the same findings could possibly be used to prove that in a future federal Europe, the Commission would serve as the state administration with the Commissioners as the ministers of a federal government.

The late Jean Siotis from Greece also made an early study of the European Commission, only this time comparing it with other existing International Secretariats. He was critical of the whole trend of studying the European Communities as a separate study of international organisation. Siotis was a Professor from the *Institut des Hautes Etudes Internationales* in Geneva. He later worked as Director General of the Centre for Translation and Interpretation in Corfu and Director of the office of the European Commission in Athens. His study of the European Commission was of a much shorter kind but is, nevertheless, still standing as influential even today.

2.1. Leon N. Lindberg - Neofunctionalism

During the 1950s and early 1960s, Leon N. Lindberg was, together with Ernst B. Haas, the principal scholar within the neofunctionalist theory. Their theories were built upon the creation of the European Coal and Steel Community in 1952, and later the European Economic Community and Euratom in 1958. The neofunctionalist theory, one might say, was essentially a reformulation of the older theory of Functionalism, applied to regional integration. The Functionalists, on the other hand, "were concerned with the problem of war and sought to use international

institutions to transfer loyalties away from national governments".¹²

While the EEC later was founded on a system of integration involving, gradually, the whole of the economic sector, the ECSC was, in Paul Taylor's words, "an agency of partial integration". By partial integration was meant the way the ECSC "sought to achieve a very high level of integration very quickly" in one area in particular.¹³ In 1950-52 the coal and steel industries were seen as the most important sectors to integrate both economically and politically, and also the sectors which national governments most likely would agree on.¹⁴

Essential to the neofunctionalist theory was the concept of "spill-over". As Lindberg put it, this concept "refers to a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth." It was first talked about in relation to the setting-up of the ECSC. Haas wanted to show that integrating one sector would inevitably lead to the integration of other sectors of society, and in the end to full economic and political integration. Nevertheless, he did point out the fact that there was no precedent for such organisational behaviour. Lindberg further argued that "the initial task and grant of power to the central institutions creates a situation or series of situations that can be dealt with only by further expanding the task and the grant of power".¹⁵ As he introduces the idea of institutions we also get the idea of their important, or even essential role in the achievement of full integration, something

¹² Taylor (1971) p. 6.

¹³ Taylor (1971) p. 16.

¹⁴ Coal and steel had a special significance to people at that time. They were the two most important industries in Europe, and they were essential for the making of weapons. As Paul Taylor puts it they were "the commanding heights of the economy". Taylor (1971) p. 16. Furthermore, integration of the coal and steel industries would lead eventually to a solution of the problem between France and Germany over the Saar.

¹⁵ Lindberg (1963) p. 10

which will be discussed further below.

In Haas' writings about the ECSC, it becomes clear that its executive body, the High Authority, was to play an important role, as a supranational institution, in the process of "spill-over", and in paving the way for complete European integration. Its first president, Jean Monnet, had wanted a High Authority consisting of five members only, by which approach he would have ensured that only the best candidates were chosen and that nationality was not taken into account. There was also a wish to make the High Authority responsible only to the Common Assembly, which in turn would have resembled a parliamentary system. Knowing that in Monnet's original plan for the ECSC there was no mention of a Council of Ministers, it seems that he had more ambitious plans than what appeared. However, going further than what the national governments were prepared to follow was impossible, something which was to become quite evident when the French Assemblée Nationale failed to ratify the EDC in 1954. This was a set back which seemed for a while to disrupt all further plans for an integrated Europe. Nevertheless, through the "*relance européenne*" and the Benelux proposals, we saw the setting-up of the EEC and Euratom in 1958. To the neofunctionalists this was regarded as a proof that their theory, and the "spill-over" effect, was working. This, despite the fact that the whole concept of supranationalism had been played down due to the failure of the EDC. The word "supranationalism" was not used in any of the Treaties of Rome, and the term "Commission" was thought less "flamboyant" than "High Authority".¹⁶ Also, it was thought to involve fewer supranational powers, in other words, to be a step back from the High Authority of the ECSC.

Neofunctionalism pointed to the importance of the Commission's engagement with the governments and its increasing involvement with more politically sensitive issues. It further pointed to the importance of the Commission's maximizing the

¹⁶ From an interview with Professor Pierre Uri in Paris on 21 September 1984. Archives of the European Communities, European University Institute, Florence.

public relations aspects of its administrative and policy-making functions. The institutions set up under the Treaty of Rome were given legislative powers. In the ECSC these powers had been vested in the "supranational" High Authority. In the EEC they were instead given to the Community as a whole. This was, in particular, a matter of cooperation and a shared responsibility between the Commission and the Council of Ministers.

According to the French President de Gaulle, the Commission was seen as a body of "'mere technicians', useful for France but certainly not to be endowed with the chief role in integration".¹⁷ As he expressed in a statement at a Paris Conference of 5 September 1960: "These bodies have their technical value, but they have not, and cannot have, any political authority or consequently be effective".¹⁸ Despite this view taken by de Gaulle, however, the French, as Lindberg put it, "have demonstrated a willingness to make concessions and have accepted the initiatory and brokerage activities of the Commission".¹⁹ And hereby Lindberg introduces two of the roles with which he characterised the Commission.

The first was the role of initiating policies, or in other words, the Commission's right and obligation to propose legislation to the Council of Ministers. This power was, in Lindberg's view, the "most important element". These proposals, sometimes of very technical character, ranged over several areas of economic policy. It was through this power that the Commission could determine, to a certain degree, the direction and the speed of the whole Community by choosing the areas of initiative. In doing so it had to present "bold, yet realistic policies" in order to fulfil the objectives of the Treaties, and not only what the Council would want to hear. Put in other words: "The Commission is thus the driving force behind the actions of the

¹⁷ Lindberg (1963) p. 289.

¹⁸ *France and the European Community*, Occasional Paper No. 11. London, PEP, 30 January 1961.

¹⁹ Lindberg (1963) p. 289.

Council, which filters, controls, and channels this force."²⁰

Secondly, the Commission acted as a broker between the Community and the member States, something it also did through its proposals to the Council. All proposals from the Commission had to go through the Council to become legislation. The Council could only change such proposals unanimously. However, if rejected, they could be changed and modified by the Commission and sent back to the Council. In this connection the Commission has been "accused of *watering down its own roles*, both as a spokesman for the common interests of the entire Community and as originator of proposals to the Council, by excessive reliance on prior consultations with national experts".²¹ The national experts referred to here were mostly the Permanent Representatives in COREPER, working under the Council, but not as a Community institution. In Lindberg's opinion the Commission had a tendency to base its proposals on what it thought the governments were most likely to accept. He would, however, not go as far as to say that the Commission did not design its proposals "to accommodate enough from each national position to win support" or assent. Often it has seemed that "the Commission's proposals pleased nobody, but were accepted ultimately because there seemed to be no alternative".²²

A third role of the Commission, deriving from Article 155 of the Treaty of Rome, was "ensuring the execution by the Member States of the Treaty and of the acts of its institutions".²³ In other words, to watch over the general functioning and development of the Common Market. To fulfill this role, the Treaty had given the Commission certain powers of recommendation and advice, as well as the right to

²⁰ Lindberg (1963) p. 32.

²¹ Lindberg (1963) p. 62.

²² Lindberg (1963) p. 71.

²³ Article 155 EEC: "In order to ensure that the Common Market works efficiently and develops satisfactorily, the Commission shall: - ensure that the provisions of the Treaty and the measures taken by the institutions by virtue of this Treaty are carried out: [...]."

gather information and verify any matter in its jurisdiction.²⁴ Furthermore, the Commission has a general role in representing the interests of the Community as a whole, as a spokesman for the Community interests. This is a role it has through its position as an independent body which may "neither seek nor take instructions from any Government or other body".²⁵ As Lindberg saw it, the staff of the Commission was intended to be the nucleus of a European civil service, which was there to carry out the day-to-day activities of the Community, ensuring that the provisions of the Treaty were observed. Furthermore, Lindberg pointed out the fact that the European Commission was a permanent body, essentially administrative or technical, as well as a strictly collegiate body. Its role was, as mentioned above, to watch over the general functioning and development of the Common Market, and to ensure the execution by the member States of the Treaty and of the acts of the institutions where the Commission had a general power of recommendation and advice. Without going into any theories of bureaucracy, Lindberg called the Commission staff and its officials a "vast bureaucratic system" which was developing, "involving thousands of national and Community officials in a continuous decision-making process".²⁶

One observation Lindberg made about the members of the Commission was that they were not technicians, but had all held posts at cabinet level or in policy-making levels of national administrations. Many had been active in politics and were thereby able to command considerable influence in their respective countries. These members, and in particular those of the very first few years, were all firm advocates

²⁴ Treaty of Rome, Articles 155, 169, 213. Under Article 169 the Commission may bring a member States to the Court of Justice, as a last solution. In Article 162 the relations between the Commission and the Council has been laid down stating their duty to "consult together" while deciding on "methods of collaboration by mutual agreement".

²⁵ Article 157.2 EEC: "The members of the Commission shall act completely independently in the performance of their duties, in the general interest of the Community. In the performance of their duties, they shall neither seek nor take instructions from any Government or other body."

²⁶ Lindberg (1963) p. 62.

of a maximum economic and political integration, as well as for delegating national powers to Community institutions. However, in Lindberg's view, the "formal decision-making powers assigned to the Commission by the Treaty were distinctly inferior to those of the High Authority" where "the Commission's role was to be largely the technical one of supervision and preparation".²⁷ What he referred to here was the difference between the Treaty of Rome and the Treaty of Paris concerning legislative powers. In the EEC "legislative powers and the ability to deal directly with the subject matter of the Treaty" was granted the Community as a whole, something which in particular involved the relationship between the Commission and the Council of Ministers. In the ECSC, however, this legislative power had been granted the High Authority alone.²⁸

To the question of whether the Commission had turned into a European civil service, Lindberg pointed out the problem of "staffing high posts with civil servants serving on leave from their own administrations", which again would lead to recruitment problems. He advanced the argument that with the kind of geographical distribution the Commission practised concerning staffing and recruitment, it might end up more like a multinational civil service. Furthermore, as Lindberg suggested, "a large and complex administrative apparatus, combined with a strict national distribution of policy-making positions, may not be particularly conducive, in the long run, to the development of real Community initiatives, and may weaken the

²⁷ Lindberg (1963) p. 67. This view has been challenged by Pierre Uri who claimed that in the ECSC decisions were taken by the High Authority with support from the Council of Ministers. In the EEC, on the other hand, decisions were taken by the Council from a proposal by the Commission. Seen this way, the system worked more or less according to the same practice in both Communities, based on a cooperation between the executive body and the Council of Ministers. As Pierre Uri has put it, it is not true that the Commission had less powers than the High Authority. In fact, he claimed that the Commission had been given more extensive powers but did not use them altogether. From an interview with Pierre Uri at the EUI, Florence on 9 January 1989. Archives of the European Communities, European University Institute, Florence.

²⁸ Lindberg (1963) p. 29.

authority of the Commission".²⁹

2.2. David Coombes - Weberianism / Theories of Bureaucracy

As rightly pointed out by David Coombes, the European Commission "does not seem to fit into any familiar classification of institutional types". It had been given formal powers which did not reach up to those of an executive branch of a federal government: it had no powers to raise revenue of its own, it was not an elected body, and it lacked authority to make decisions on its own on the most important matters. On the other hand, it must be stressed that it had been entrusted with powers and functions that went far beyond those normally associated with an international secretariat. These were first and foremost its formal powers to make proposals upon which Community legislation would be based, and, secondly, its duty to act as the "conscience of the Community". Furthermore, it was intended as the political leadership of the Community, representing "the Community as a whole". However, Coombes was of the opinion that the European Commission did not fit with the definitions of its political role. Instead, in the search for a definition of the role of the Commission that would suit all its functions, Coombes chose the one of "*an institution in the process of political unification*".³⁰

In his study of the European Commission, David Coombes relied heavily on Max Weber's theories of bureaucracy.³¹ Weber has presented several different approaches to the study of bureaucracy: his first approach sees bureaucracy in a constitutional sense, referring to the "Administrative State". In this case the organisation would be a machinery of public administration. The Commission could, however, not be classified according to legal, constitutional criteria, and from a

²⁹ Lindberg (1963) p. 73.

³⁰ Coombes (1970) *Politics and Bureaucracy in the European Community. A portrait of the Commission of the E.E.C.*, pp. 101-102.

³¹ Coombes (1970) pp. 102-106.

review of its formal powers it is not clear whether it was a bureaucracy in the constitutional sense or not.

Secondly, Weber saw bureaucracy in a sociological sense, which was his "ideal-type" bureaucracy in which it is "ideally represented by an administrative system in which everything is sacrificed to the rational pursuit of specified goals". Bureaucracy in a sociological sense would, further, refer to a more "general type of organisation rather than to a particular set of institutions". Characteristics of Weber's "ideal-type" bureaucracy are first of all a clear division of labour with a high degree of specialisation. Secondly, recruitment of officials is based on technical qualifications, and administrative structures are based within a "pyramidal" system where authority is clearly circumscribed at each level.

The Commission has, throughout its existence, been criticised for having adopted the working methods of a large and slow bureaucracy. To prove whether or not there was any justification in this, Coombes put forward an assumption, which was to be the basis of his study, where he said: "In so far as [the Commission] is a 'bureaucracy', then the Commission will be unable to ensure the political leadership which is required to bring about an effective union of Europe." In Coombes' view the European Commission appeared as a new type of organisation which had been difficult to fit into an already existing type of organisation. It was given powers which generally belonged in a political system, and others which made it similar to a national administration or a bureaucracy. As he put it: "Roughly speaking in some aspects the Commission is expected to act as a bureaucracy and to have the essential characteristics of an implementative, 'goal-seeking' organisation, while in others it must behave as if it constituted the political leadership of the Community, acting as an initiating, 'goal-setting' body".³² While studying the roles of the Commission more closely, Coombes classified them into four different groups.

³² Coombes (1970) p. 234.

The first of the four functions Coombes assigned to the European Commission was that of Initiative. By this is meant the right and duty of the Commission to initiate Community legislation and to "make recommendations on any matter it thinks fit within the framework of the Treaty". Through this role the Commission had got, not only the power, but also the obligation, to provide the dynamic of the Community, and it would do so by setting the objectives for the future through the elaboration of new programmes of action, as well as by interpreting past achievements of the Community as a whole. Relating this back to Coombes' initial discussion on bureaucracy, he said: "Initiation requires a degree of innovative activity which is not normally found in a bureaucracy, which is designed essentially for the execution of existing programmes."³³ It is largely because of this particular role that the Commission is so hard to classify. It performs a role which, in a national setting, normally is confined to the government, a role which, by federalists, may have been envisaged for the Commission in a future United States of Europe. However, in the Community perspective, the Commission cannot take the final decisions. This role has been given to the Council of Ministers, something which makes the two institutions highly dependent on each other.

The second role of the Commission was what Coombes described as the Normative function. Within this category comes such roles as the "guardian of the Treaty" and the "conscience of the Community", and relates to the Commission's role in interpreting the Treaty to make sure that all its acts and protocols are followed by all parties. It, further, means that the Commission acts as an "honest broker" during the legislative process in the Council of Ministers. This means that, in order for the Council to be able to take decisions, the Commission will amend its proposals in order for the Council to achieve a majority, as far as this serves the interest of the Community. In this respect the Commission can take "upon itself the duty of laying down the Community interest, rather as a national government

³³ Coombes (1970) pp. 234-235.

interprets the public interest".³⁴ Furthermore, the Normative function includes the "filling out" of the provisions of the Treaty, and the right to react to unforeseen situations.³⁵

In his discussion of the functions of the Commission, Coombes saw the Initiative and Normative functions as belonging to the same category. In his view they "give it the role of political leader and promoter of Community interest", without which the Community would simply turn itself more and more into an intergovernmental organisation of the same kind as the OECD or the Council of Europe.³⁶

As a third role, Coombes pointed out the Commission's Administrative function. On the one hand, it had to prepare for decisions to be taken, produce data and keep records, and take a number of regulatory decisions concerning the customs union. On the other hand, it had, in its capacity as the "guardian of the Treaty", to be on its guard against possible violations of the Treaty. The Administrative function, which has a very different nature from the Initiating role, could, therefore operate as a constant threat to the latter. As put by March and Simon:

"If all the resources of an organization are busily employed in carrying out existing programs, the process of initiating new programs will be slow and halting at best. Frequently, when a new program is to be developed, a new organizational unit is created and charged with the task first of elaborating the new program and then carrying it on when it has been elaborated. This procedure provides for a spurt of innovative, program-developing activity - a spurt that automatically

³⁴ Coombes (1970) pp. 235-236.

³⁵ Coombes here mentioned as an example the Commission's reaction to the French veto of British membership in 1963, where it condemned the French Government for going outside the Council of Ministers. Another example of the Commission executing its Normative function was when the Commission represented the Community in the Kennedy Round negotiations. In both cases the Commission spoke on behalf of the Community, laying down the Community interest.

³⁶ Coombes (1970) p. 236.

diminishes as the program is elaborated and the task shifts gradually from one of planning to one of execution."³⁷

Lastly, the Commission had been given a Mediative function. It had as its duty to try and achieve agreements between the member States in the Council of Ministers, something Coombes compared to the function of the secretariat of an intergovernmental organisation like that of GATT. In fulfilling this function the Commission would often use its presence in the Committee of Permanent Representatives, as well as in its sub-committees and the Council of Ministers itself. This would mean that the Commission could and should involve itself in all the various stages of the decision-making process.

As has been shown above, the various functions of the Commission seemed to work well when seen one by one. To exist all together, however, within the same organisation, is what could cause problems of definition. To be a mediator, Coombes argued that the Commission could only with difficulty fulfill its normative function as these two functions, he said, were incompatible, or even contradictory to each other. The first required a flexible, objective and impartial organisation whereas the latter worked where there was a commitment towards a certain set of values. Furthermore, the mediator who initiated too often would run the risk of being regarded as partisan, and the initiator needed the support of a legitimizing, norm-setting authority. Creativity, on the other hand, was lacking in the administrator while inventiveness was required by a mediator. The tension between the bureaucratic responsibilities, represented by the Administrative and Mediative functions, and the political responsibilities, represented by the Initiative and Normative functions, has existed since the days of the High Authority, and has to be worked on constantly. However, as Coombes pointed out, "[R]ight up to the time of the merger, the Commission was still regarded [...] as a relatively intimate and

³⁷ J. G. March and H. A. Simon (1958) *Organizations* (New York: Wiley), pp. 186-7. In: Coombes (1970) p. 238.

cohesive body."³⁸

During Coombes' discussion it appeared that the Commission became more and more what he called a 'porous' organisation during the 1960s. By a 'porous' organisation he meant a loose and open-ended organisation which would rely on different forms of administration and different normative approaches which would be competing for domination within the organisation. Such a situation, he argued, would be suitable to the Mediative function of the Commission in that it would help "to ensure that the organization is sufficiently flexible and impartial to react to different national positions."³⁹ As Coombes further argued, the Commission entered a 'porous' condition as skilled, experienced specialists became more in demand, resulting in an increasing recruitment of seconded national civil servants. These would not necessarily seek employment in the Commission as a career. With seconded civil servants there was also an increase in the national governments' interest in how they were represented in the Commission, an element which could lead to the formation of different enclaves within the organisation. The result of this would be more interaction between the various levels, as well as between the sections horizontally. The representative level of the organisation, in this case the College of Commissioners, would be less overloaded and divided, which again would lead to inefficiency.⁴⁰

If the 'porous' organisation was suitable for the Mediative function on the one hand, then it would, on the other hand, be conflicting with the Administrative as well as the Normative functions. The Administrative function, which deals with implementing and defending Community policies, needs consistency and uniformity within the organisation, and would in the end result in a growth in bureaucratic rules and procedures. The Normative function, however, required the Commission "to

³⁸ Coombes (1970) p. 253.

³⁹ Coombes (1970) p. 291.

⁴⁰ Coombes (1970) pp. 257-258.

take a definite stand on the future direction of the Community", vital to the process of unification. Coombes argued that such requirements would be threatened by a 'porous' organisation which must be based upon a common culture, more like "the partisan authority which was prevalent in the early years than the loose, flexible, adaptive, 'coalition' arrangement that has developed".⁴¹ The common culture would in the case of the Commission be something rather vague, like being "European", which, Coombes argued, would not survive in the end in a 'porous' organisation. As secondment of national civil servants became increasingly common as a recruiting method to the Commission, the common culture became more difficult to maintain. The Kennedy Round of GATT, however, together with Regional Policy at a later stage, are examples where the Commission has existed and operated as a 'porous' organisation. During the Kennedy Round negotiations the main responsibility was divided up between special sections within three different Directorates General. The Commission had decided to appoint a special team to take care of the negotiations which resulted in conflicts over personal matters, politics and nationality, as in the Commission itself. The list of negotiators was drawn up corresponding to the national groups, similar to the system in operation within the staff of the Commission as a whole. Furthermore, the Commission negotiators were for the occasion given a higher rank with direct access to their Commissioner. This shows how hierarchical and other status considerations existing within the Commission at the time played less of an important role during the Kennedy Round negotiations. More important was to create a suitable working team among the Commission staff and officials.⁴²

2.3. Jean Siotis - International Secretariats

Jean Siotis put, in his article "Some Problems of European Secretariats", a critical finger on the various studies of the European institutions and the European

⁴¹ Coombes (1970) p. 261.

⁴² Coombes (1970) pp. 198-201.

integration process through its newly established European, or regional institutions. He was critical of the so-called "area study approach" which he claimed was only focusing on "one particular stage in the evolution of one particular sector of that area". By this he meant the fact that these "European" specialists looked at Europe solely in the light of integration or federation, represented by the foundations of the European Communities and their institutions.⁴³

His second criticism related to the study based on the "uniqueness" of the European institutions, which, he claimed, was justified solely due to "the insertion of the term 'supra-national' in the Paris Treaty" as well as having been "used to designate the powers of the Commission and the Council of the EEC". Thirdly, his critique went to the "European science" approach where the existence of a "European science" was looked upon as different from domestic political science and from international relations. It would thereby be implied that there should exist a "Community field". Lastly, he pointed out to those taking the "ideological" approach, or commitment to the study of European regionalism/institutionalism, the fact that the acclaimed "'irreversibility' of the unifying process" which was supposed to lead to a "federal type of political union" had not yet been proved. Siotis preferred to follow the example of Paul Reuter and treat the European institutions as "one of the expressions of regionalism".⁴⁴

Through his article Siotis attempted to define the term "European Secretariat" and make this fit with the European Commission. As examples of other European Secretariats he mentioned the Congresses and Conferences of the Concert of Europe, the European Danube Commission, the Rhine Commission, and, finally, the League

⁴³ Siotis (1964) *Some Problems of European Secretariats*, p. 222-223.

⁴⁴ Siotis (1964) p. 223. The sort of regional organisation referred to in this context is not restricted purely to the geographical term. The organisation is regional because it cannot by definition be universal for political, geographical or other reasons. See Paul Reuter (1958) *International Institutions*. Translated by J. M. Chapman. (London: Allen and Unwin Ltd.)

of Nations and the United Nations. They all had some kind of an executive body or secretariat although they could not all be characterised in the same way, ranging from purely administrative, at the one end, to "supranational", at the other.

In relation to the European Commission, as well as the High Authority, Siotis raised several objections to the attempt to define these as "European Secretariats". One objection was the fact that the High Authority and the European Commission were "based on the original concept of an independent supranational executive body, taking decisions by majority vote". As this involved exercising powers "transcending the national frontiers of member States", it would not fit with the idea of a "traditional" international organisation. This similarly goes for what was considered as the ultimate goal of these institutions: "to attain, through integration, the complete political unification, or at least the federation of the six countries". "Traditional" international organisations were concerned about the relations between States and how these could be as friendly as possible. A third objective had to do with the way "the Commission ... [was] considered as one of the constituent elements of the Communities on an equal basis with member States" and being "empowered to act as the *force motrice* in promoting and applying Community policies". "Traditional" international organisations, or secretariats, as Siotis pointed out, would be in a subordinate position to multilateral decision-making bodies. One could here mention the Free Trade Area negotiations and the Kennedy Round of the GATT as examples. Lastly, Siotis made the observation that "the European institutions do not form a regional system of international organisation in the traditional sense of the term". The European Communities' institutions, as he pointed out, "are an expression of a Community of nations" and cannot be qualified as international institutions, whereas "'Community' institutions" could be a more appropriate term.⁴⁵

With the four above mentioned objections in mind, Siotis continued with a discussion on the composition and powers of the European Commission. One of the

⁴⁵ Siotis (1964) p. 228.

objections to the European Commission being qualified under the definition of "European Secretariat" was the fact that "the Commission is independent of any national or international authority". However, in Siotis' view, the fact that this appeared from the Treaty of Rome could not be said to make it an original character of the Commission as he claimed it had already been established in the Charter of the United Nations. Nevertheless, from studying the functioning of the European Commission and the Commission administration one must recognise the fact that the Commission occupied the position of spokesman for "Community" interests, contrary to the national interests expressed in the Council.

Another important role of the Commission was to "ensure the application of the provisions of this Treaty and of the provisions enacted by the institutions of the Community in pursuance thereof".⁴⁶ This is what others have called the "guardian of the Treaty" and does go further than powers developed by "traditional" international Secretariats. As the "politically most important category", however, Siotis stressed the Commission's role in the diplomatic field. The Commission represented the Community's interests both inwards and in negotiations with "outsiders". Such formal relations with other States was a role not normally entrusted to an international organisation. Lastly, Siotis mentioned the role of consultation which was given to the Commission and the Council of Ministers together. According to Article 162 of the Treaty of Rome "[T]he Council and the Commission shall consult together and shall decide on their methods of collaboration by mutual agreement". The point which Siotis made here was the fact that this was an element which, from a constitutional point of view, placed the Commission "on an equal basis with the Council in regard to the vital problem of establishing the nature of their collaboration".⁴⁷

⁴⁶ Siotis (1964) p. 237.

⁴⁷ Siotis (1964) p. 238. Article 162 EEC, as quoted by Siotis: "The Council and the Commission shall consult each other and shall settle by mutual agreement the particulars of their collaboration." This was a translation made before there was an official English version of the Treaty of Rome.

Concerning the Communities having as their ultimate goal some sort of political unification or federation of the member States, Siotis argued the fact that no provisions for any such goals were to be found in any of the treaties and only through the setting-up of "ministerial-type Divisions in the Commission's administration". Further, he claimed that for a political union to exist or be created there must exist a "common political consciousness, or at least an acceptance of strong bonds of political solidarity" which neither existed nor was actively promoted by any European executive.⁴⁸

In an assumption Siotis made, he said: "If we admit that international Secretariats are institutions which do assume executive functions, international in their nature but extending on certain occasions into the field of domestic jurisdiction, then we may consider that the EEC Commission, and the High Authority, considered as a whole with their respective administrations, are international Secretariats." As he further argued, the powers of the Commission which do "extend into the fields of domestic jurisdiction of member States, they do so on matters which are not of vital national importance and that the full execution of decisions adopted by them depends, ultimately, on the co-operation of the competent national administrative organs".⁴⁹

In his conclusion, Siotis claimed that in times of political consensus the Commission appeared as an independent entity with extensive executive functions. However, his argument was that as soon as a crisis appeared the Commission took the form of a multilateral organisation where each State would make claims for itself without regard to the needs or interests of the other States, or of the Community as whole.

⁴⁸ Siotis (1964) p. 230.

⁴⁹ Siotis (1964) p. 231.

3. THE AIM AND SCOPE OF THE THESIS

The presence of Walter Hallstein as the Commission's first President, from 1958 until 1967, not only cast a strong influence over the establishment of the European Commission. Also the institution itself became highly influenced by German administrative and bureaucratic traditions, not least due to Hallstein's own background in the German administrative system. This was a tradition of big administrations serving according to a strictly hierarchical system. During a meeting with the former Executive Secretary of the Commission, Emile Noël, he stressed the highly political role of the European Commission during its first few years in existence. The reason for this, he said, was the fact that the executive work during this period was limited and the Commission could therefore concentrate on building new policies, some of which were required set up by the Treaty of Rome.⁵⁰ Secondly, the political discussions and negotiations with third countries performed by the Commission in the Free Trade Area Negotiations and the Kennedy Round of GATT were of major importance. Others, on the other hand, like Pierre Uri,⁵¹ thought the Commission had become too big and too bureaucratic from the very beginning. This is a view which can possibly be understood from the fact that he had been present at the setting-up of the High Authority and its administration from 1952, taking a more minimalist approach. Hallstein, however, had made a conscious decision not to copy the High Authority and thought it important to build up a workable administration as soon as possible. This was very much unlike the approach taken by Jean Monnet. The latter had been of the opinion that the administration should develop according to needs, and only in a minimalist way. One reason for the fast growth in size of the Commission, however, was the need to

⁵⁰ View expressed by Emile Noël at a meeting on 12 December 1994 in Paris.

⁵¹ Pierre Uri had been with Jean Monnet in the Modernisation and Investment Plan for France since 1947, and was highly involved in the team writing of the Treaty of Paris in 1950. With the setting-up of the High Authority and its Divisions, he became the Head and overall coordinator of the Economics Division. He resigned from the High Authority in July 1959 and was later to be found with Jean Monnet in the Action Committee for a United States of Europe.

stress its independence of national governments and administrations, which had to be done from its very first day.

The political role within the European Commission, which its President Walter Hallstein is claimed to have played, could also be seen in the light of certain actions taken by the French President de Gaulle. His refusal to re-appoint Hallstein for a third period, to become the first President of the single Commission for the European Communities in 1967, might possibly be seen as evidence of Hallstein having acted too politically in his role, at least for the liking of some.⁵² De Gaulle had initially only accepted the EEC after having received the promise of extensive concessions for France. Once the chance appeared, however, the role and powers of the member States were demonstrated clearly.⁵³ It could further be interpreted as evidence of the fact that the Commission and its Commissioners could act as politically as they wanted, when given the chance by the member State Governments. This seems to have been very much the case in the time between 1958 and 1962-63, in particular, when there was a general will among the member States to see the EEC in operation and the provisions of its Treaty set out. Combined with favourable circumstances in general, it was an easier situation facing the European Commission during the above mentioned period than that which was to come during the following two decades. Nevertheless, the argument of this thesis will be that independent of favourable external circumstances, the personal resources of the early Commission placed it in a situation able to assume an independent political leadership.

⁵² Not accepting Hallstein as President of the single European Commission was, as Coombes has put it, a "vengeance" for the Commission's behaviour before and during the "empty chair" crisis and the Luxembourg Agreement. Coombes (1970) p. 280.

⁵³ The particular case referred to here, of the Merger of the Executives, came only two years after the crisis in 1965 when France withheld her representatives to the institutions of the EEC over a period of six months, due to disagreements over agricultural policies.

In support of statements made by Emile Noël,⁵⁴ it will be argued in the chapters below that, despite its growing administrative structure, the European Commission showed considerable political leadership during its first few years in operation. This was in particular the case during the European Free Trade Area negotiations between the Six and the rest of the OEEC, and the Kennedy Round of GATT. In both cases the Commission managed to present a unified Community view in negotiations with third countries or groups of third countries. It was important for the newly created European Commission to demonstrate its independence in relation to the national governments as well as towards the Council of Ministers at an early stage. The above mentioned Free Trade Area Negotiations, where the Commission only entered half-way through, proved to be useful for this purpose. Furthermore, it will be argued that, despite having certain characteristics in common with a bureaucracy or a civil service, this is a role which only with difficulty can be combined with its role as an independent political body. The Commission had an administration which in many ways resembled that of a national administration and operated much like a civil service. However, the Commissioners themselves, who make up the collegiate body, had a strong political role in shaping the future of the Community through its role as the initiator of policies. Therefore, it seems important to distinguish to a certain degree between the College of the Commissioners, on the one hand, and its administrative staff on the other. There will, however, be a thorough discussion of the four functions identified by Coombes below. From this discussion it will seem clear that the Commission was an organisation consisting of many others within itself, depending on the circumstances and the functions required at the time. This is why it has been so problematic for scholars throughout the years to place it into any known group of organisations.

As we have seen above, and which will be discussed further below, the three authors Lindberg, Coombes and Siotis identified many of the same functions of the

⁵⁴ Reference to statements by Emile Noël will be found in the footnotes throughout the thesis, in particular in Chapters IV and V.

European Commission. The importance put on each of them and the reasons for this may, however, vary considerably. An important reason for this could be the difference in time of writing as well as the actual position of the author inside or outside the Community system, combined with nationality.

Leon N. Lindberg came with his book on the European Commission at a very early stage when he had few, if any, other authors to be influenced by. He wrote during a time characterised by optimism and progress and a great willingness for achievement. The main characteristic of Lindberg's writing was the importance he placed on the Community institutions, and the European Commission in particular. He belonged to the same school of thought as Ernst B. Haas who had earlier written about the ECSC, where an equally great importance was placed on the High Authority as the main instrument in the integration process, even if the two cases are slightly different. Lindberg believed that it was going to be the Commission which would be the driving force behind the process of European integration. With its right and duty to initiate legislation it would push the Community forward into an even stronger commitment, and a closer and deeper cooperation. This was the idea behind his theory of "spill-over", where this process would happen more or less automatically, due to the institutional framework given. Later critics of Lindberg have claimed that he undermined the role and importance of the member States during this process. Nevertheless, one has to see any writing in the light of the time it was written. In this case, Lindberg carried out his study before any of the member States had demonstrated their powers to the extent which was going to happen later in the 1960s. An illustration of this can be found in the conclusion of his book where Lindberg came with the following question: "Have the Six abandoned the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central institutions?"⁵⁵ The combination of the right circumstances and personalities coming together might make such a question seem reasonable after a

⁵⁵ Lindberg (1963) p. 283.

study of the performances of the European Commission before 1963. Lindberg himself, however, was later going to be one of the first to realize that this had not quite been the situation.

One of the important elements in the integration process identified by Lindberg was the system of co-opting civil servants from national administrations and interest groups. It was meant as a means to avoid conflicts between the Community and the member States, as well as to gain support for the Commission within the national administrations or interest groups. By sending civil servants from the various national administrations to work in the Commission administration for a period, it was believed that they would return with a more European outlook which would, in turn, influence their work on the national arena, in a Europeanization of the member States. This would in turn increase the general support for the European Commission.

The fact that Lindberg wrote his book before the first veto by the French President de Gaulle towards British membership to the European Communities, on 14 January 1963, and before the "empty-chair" crisis where France withdrew her representatives from the Community institutions for six months in 1965, could have led to the tempting conclusion that his writing is now totally out-dated and of no important relevance in the study of the European Commission of the 1990s; if anything, it is purely a historic document of nostalgic value. This, however, would be far too easy an approach which will not be supported in this thesis. What Lindberg did was to present theories and views that have been of help in analysing the development of the European Commission in the period after his study was published. Furthermore, by identifying the various functions and roles played by the Commission within the Community system at such an early stage, it has been possible to compare this with later developments, to see whether it has had any influence in any way. Already two years later, however, in 1965, he recognised in an article that his earlier writing had been much influenced by a "romanticism" of the first period of the European Communities which had seemingly faded, making

the decision-making process more complex.⁵⁶ In spite of this, one should not draw the conclusion that at the time of writing, many of his theories could not have been correct.

Much of the early "romanticism" and optimism of Lindberg's writing had already disappeared by the time of the publishing of David Coombes' *Politics and Bureaucracy in the European Community* in 1970. By this time the Community had already gone through several crises which had given the relationship between the European Commission and the member States a different aspect. Lindberg had concluded in his study that the European Commission had taken over aspects of the political and foreign policies which were traditionally the domain of the member States, and that this was likely to increase in the future. Coombes, on the other hand, talked about a different picture where "the Commission came increasingly to exercise purely delegated, administrative functions and that this was related to its tendency to acquire a more and more bureaucratic organization".⁵⁷ Despite identifying certain functions of political character, he remained sceptical about putting too much into this. He therefore pointed out the fact that the "political leadership" of the Commission was no more than a group of men appointed by their national governments, with most of their actual powers delegated. For a real political leadership to be possible, he argued, its leaders would have to be politically elected. Nevertheless, Coombes did, to a certain degree, recognise the promotive role played by Walter Hallstein and his Commission which managed to develop an *esprit-de-corps*, in their work for the European cause.⁵⁸ Some would argue that what he here has mentioned was already a political role, whereas others again would give the credit to favourable circumstances, and a favourable environment given by the member States, as well as to the fact that the political role performed by the

⁵⁶ Lindberg, *Decision-Making and Integration in the European Community*, *International Organisation*, Winter 1965, Vol. XIX, No. 1, pp. 56-80. In: Coombes (1970) p. 94.

⁵⁷ Coombes (1970) p. 326.

⁵⁸ Coombes (1970) p. 308-309.

Commission was in the interest of the member States themselves. Coombes also argued that up to the Merger of the Executives in 1967 "the Commission was still regarded by some close observers as a relatively intimate and cohesive body",⁵⁹ although others have observed how "thereafter collegiality and cohesiveness declined and bureaucratic pressures exerted themselves".⁶⁰

A negative effect, which has often tended to be regarded as a "Europeanizing" element, however, was the practice of secondment of national civil servants to the Commission administration. In Coombes' view this only led to the "forming of 'coalitions' based on different styles of administration and different norms", which further created a disunity within the organisation.⁶¹ One could imagine such "coalitions" being created between the different groups of nationalities and languages. Despite arguing mostly against the European Commission having performed a political leadership, even during the first few years, Coombes does, nonetheless, recognise the fact that "the Community venture cannot succeed unless it is regarded as an essentially political undertaking".⁶² What one might read out of this statement is that, even if it never was, nor will ever become, a political body, the success of the Commission in its early years can only be explained by the fact that the Commission itself, as well as the environment around it, regarded it, or wanted to regard it, as having a political role to play in the European integration process.

The article published by Jean Siotis presented quite a different approach to the study of the European Commission from those taken by Lindberg and Coombes. The element they all shared, however, was the search for a suitable category in which to place this new organisational phenomenon: the European Commission.

⁵⁹ Coombes (1970) p. 253.

⁶⁰ Edwards and Spence (1994) p. 7.

⁶¹ Coombes (1970) p. 310.

⁶² Coombes (1970) p. 307.

Nevertheless, Siotis came to disagree with most of his contemporaries in the study of this organisation. The fact that it was European, he argued, did not qualify for a "new" science approach, and, of so-called "supranational" organisations, the European continent had already seen several earlier examples. Furthermore, the much acclaimed irreversibility, the essence of Lindberg's theory of "spill-over", was at that stage too early to have been proved to be valid. Even the existence of a European "Community", among the Six in a sociological sense, was something which was disputed by Siotis. Two main reasons to support this argument was, on the one hand, the fact that had the United Kingdom decided to join, the "Community" would have taken quite a different course. On the other hand, this "Community" of Six had not existed in any form before the setting-up of the ECSC. In his discussion on the functions of the European Commission he referred to its diplomatic role as the "probably politically most important category". Nevertheless, he seemed rather critical of the fact that by referring to outside representatives to the Community as "ambassadors", "the Community assumes an important prerogative of statehood, and the Commission, in its relations with them, that of a government".⁶³ In his conclusion, Siotis mentioned the existence of national "enclaves" at all levels of the Commission administration. This was an element also discussed by other authors. Lindberg's view on co-opting national civil servants to work in the Commission administration was seen to avoid conflicts within the Commission. Coombes, on the other hand, was more concerned with the "Europeanizing" effect on the national administrations, which in turn would increase the support for the European Communities. Siotis did not regard the question from the same point of view, but rather in relation to the political consensus. As long as the political consensus remained, he argued, national "enclaves" "will not constitute an obstacle to the normal functioning of the institution".⁶⁴ Furthermore, without this political consensus, the Commission would no longer seem like an independent executive body in the Community system. Siotis concluded thereby that "in times of

⁶³ Siotis (1964) p. 239.

⁶⁴ Siotis (1964) p. 249.

crisis, its multilateral character is accentuated". This latter point seems to a certain extent to be supported by Emile Noël who claimed that, despite showing considerable political leadership, multinational characteristics would appear in the European Commission during times of crisis.⁶⁵

In a study involving the structures and roles of the European Commission there are two elements of special importance to be considered. One is the Commission's role as the motor of integration, which has come out of its right and duty to initiate legislation in the European interest. Another is the fact that it has to be an independent body, meaning independent both of the national governments of the member States, and independent of other bodies of political as well as economic and industrial character. Both of these requirements can be traced directly from the Treaty of Rome. It has perhaps been through its role as the initiator of legislation that the political character, or lack of such when that has been the case, of the Commission has been most easily observed. Executing this role, the Commission has to take several important and decisive choices. These involve choosing the areas to initiate legislation and how far they ought to go. Further, and equally important must be its choice not to present any initiatives in certain areas and at certain times. All these choices, one could argue, are political choices. Some legislative initiatives can be more technical in outlook, and some can be more narrow than others. They will all, to some extent, be of political character. When one has to see these aspects in relation to external circumstances, one will find that they can be decisive in respect of the direction and speed of the whole European integration process.

During the early days of the European Commission, its President Walter Hallstein, made several decisions, or choices, concerning the organisational structures and administrative outlook of the Commission. Both the structures with which the Commission had to work, and the people recruited to work in it, were

⁶⁵ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

conscious decisions taken by President Hallstein in conjunction with the rest of the College of Commissioners. The people recruited to work in the Commission in 1958 were pioneers in every respect and probably more "European" than many of those who came later. The first round of recruitment had no competitions or recruitment procedures to follow either, as these were only established later on. The structures of the Commission administration, as it appeared from very early onwards, has been compared with civil services, international secretariats and bureaucracies. We will see from the study below that the administrative structures established under the presidency of Walter Hallstein have even been criticised for having been too hierarchical and rigid. The study made by Coombes has proved most useful in the study of the functions of the European Commission during its early years. He presented a very clear division and description of what he considered to be its main functions. This study, however, came at what must be considered as a rather "low" period in the history of the European Communities. He had observed two vetoes from the French President de Gaulle concerning the membership of the United Kingdom in the EEC, and he had followed the "empty chair" crisis where France withdrew its representatives to the EEC for six months in 1965. By 1970 supranationalism was more or less considered as "dead and buried" and the neofunctionalist theory of integration did not seem to be applicable anymore. Therefore, Coombes' study can be seen as very much in contrast to the earlier study by Lindberg which can be characterised by an early optimism and a boost for European integration. Lindberg's study, we will see, placed a considerable importance on the institutions in this process. Coombes was later to see how the member States and their governments had kept their grip on many final decisions.

In a study of the establishment of the European Commission and its administrative development it will be necessary to go back even further in time and look at the influences that existed in Europe during the late 1940s and 1950s. Chapter II, therefore, will discuss the post-war period leading up to the Schuman Declaration of 9 May 1950, and the development that followed of the High Authority of the ECSC from 1952 onwards. In order to understand the developments that the

later European Commission and its administration underwent, it will be interesting as well as essential to make a study of the High Authority and its administrative development. Apart from the Secretariat of the League of Nations which will be discussed briefly, the High Authority was the only more or less equivalent organisation that existed before the establishment of the European Commission, and also in many ways a direct reason for the latter.

Chapter III will take the development further, through the steps leading up to the signing of the Treaties of Rome. As the EDC and the EPC failed to materialise in 1954, the prospect of any further European integration seemed bleak until the Messina Conference of June 1955, followed by the Spaak Report of April 1956. The so-called "*relance européenne*" will be seen as evidence of the willingness of the Six to continue the integration process which had been started by the Schuman Declaration. The Spaak Report largely defined the way ahead, and less than a year later the two Treaties of Rome, setting-up the EEC and Euratom, were signed. As we start the study of the European Commission, its formal powers will be the first to be defined, together with a short discussion on bureaucracy. Lastly, a phenomenon which deserves a proper discussion are the Commissioner's own "cabinets" - particular to the European Commission when compared to other "international organisations", and adopted from the French administrative tradition. The existence of "cabinets" in the Commission has been seen over the years as both an important resource as well as an element of great influence on the individual Commissioners. The latter is an element which could even be regarded as a violation of the Treaty of Rome and of the independence of the Commissioners from their national administrations.

Chapter IV will be devoted to a discussion on the Commission itself, the first Commissioners and the administration, how it was set up and what it came to look like. Within the college of the Commission each personality will be discussed in relation to nationality, occupation and procedures for appointment. Further down in the Commission structures we will deal with the organisation of the Commission into

portfolios and Directorates General, as well as the role of the Executive Secretary. Furthermore, the Commission's functions and features will be dealt with in detail together with the process leading up to the "*Statut de Service*". The latter was to be an indication of the administration of the European Commission finally having established itself as a truly international administration where Community nationals could enjoy similar career prospects and securities to those existing in their national administrations. This is also the chapter, together with Chapter V, where the material collected from the Archives of the European Commission in Brussels has proved to have been most useful.

Chapter V, which will be presented as a case study, will look at the European Commission and analyse its role during the Free Trade Area negotiations. Since these negotiations started before the Commission was set up it was its first chance to show itself as an independent, political European executive body. We will here discuss the Agreement of Association that was set up between the High Authority and the United Kingdom which was also the first example of an association negotiated between a European executive and a third country. The position of the United Kingdom towards the European Communities will also prove to have been important during the Free Trade Area negotiations. These negotiations would most certainly never have happened had the United Kingdom wished to join the Six during the 1950s. As the Six decided to set up the EEC and Euratom we will present an analysis of the United Kingdom's approach to these as well as the Six's approach to the former, all within the context of the Free Trade Area negotiations.

The novelty of the European Commission was the fact that it was the first executive "supranational" body, voluntarily established by the Community member States to cover all aspects of economic life, with the power and the duty of initiating policies by sending its proposals to the Council of Ministers. Earlier examples of similar kinds belonged to the so-called sectorial category, covering only specified areas or particular industries. The European Commission was thereby a more ambitious project, where the Treaty of Rome only gave an overall framework.

Because of that the European Commission was shaped to a large extent by personalities, both directly involved in the Commission as well as at on the national political level.

CHAPTER II

FROM THE HIGH AUTHORITY OF THE ECSC TO THE ESTABLISHMENT OF THE EUROPEAN COMMISSION

*Il n'y a pas d'idées prématurées, il y a des moments opportuns qu'il faut savoir attendre.*⁶⁶

1. INTRODUCTION

When the European Coal and Steel Community (ECSC) and, with it, the High Authority was established, several factors were there to make it possible. For such a 'revolutionary' project to be possible and succeed it was necessary with a combination of the right group of people, and the right circumstances, at the right time. Jean Monnet, who had come from the Modernisation Plan for France and who was "neither a civil servant nor a politician", but "in a category of his own",⁶⁷ was the man behind the idea. The French Foreign Minister Robert Schuman was the political personification of this idea. Although Jean Monnet was a highly respected man in political and governmental circles in many European countries as well as in America, he was a man who worked behind the scenes and preferred to remain there. In order to enjoy the credibility needed for other states to follow, a political figure of high profile was needed to take the political responsibility. Due to circumstances beyond control this came to be the Foreign Minister rather than the Prime Minister at the time, Georges Bidault.⁶⁸

For big steps to be taken there has to be present a certain will among the

⁶⁶ Jean Monnet, *Clefs pour l'Action*, p. 31. "There are no premature ideas, there are opportune moments that one must learn to wait for." Own free translation.

⁶⁷ Interview with Baron Robert Rothschild by François Duchêne in 1993. In: Duchêne (1994) *Jean Monnet. First Statesman of Interdependence*, p. 21.

⁶⁸ A full account, as seen by Jean Monnet, can be found in his *Memoirs* (1978) pp. 298-300. See also Duchêne (1994) pp. 199-201.

people. However, without the right surrounding circumstances, great ideas will come to nothing. The setting for the ECSC could possibly be said to have been perfect. Both France and Germany were devastated after World War II. Uniting them, together with other Western European states, in a common effort could replace war with prosperity and peace.

The ECSC was the first of the total of three European Communities set up during the 1950s. It was, as will be shown, the pioneer as well as the condition for the latter two, the European Economic Community (EEC) and Euratom, to be set up in 1958. By then several experiences had been made within the area of European integration and European institutions. The High Authority was the first experiment of a "European Civil Service" despite efforts to avoid such a thing to be created. When the European Commission of the EEC was set up some years later certain traces of the High Authority could be found, although what was equally evident were the attempts of creating something different.

What will be done in this chapter is to analyse the favourable surrounding circumstances for the success of the Schuman Plan leading to the ECSC in 1952. Furthermore, a discussion of the setting-up of the High Authority, its administrative structures, and how it functioned will follow. The purpose will be to see how this could later have influenced the setting-up of the European Commission and its administration in 1958. The League of Nations will be used as an example of a supranational body functioning before the High Authority came into being. This seems particularly appropriate considering the fact that Jean Monnet had worked as deputy to the Secretary-General of the Secretariat of the League of Nations.

2. INFLUENCES BEHIND THE SCHUMAN DECLARATION: THE IMPORTANCE OF FRANCE

2.1. Germany in the Post-War Period

The post-war period in Europe was going to be very important, if not to say decisive, for the future of the whole continent. One was faced with people who were tired of being at war with one another but still sceptical of what might come. Five years after the end of the second world war there was a certain anxiety and fear that, if nothing was to be done, another war would soon occur. Germany would not, as previously, be the instigator, but the prize. What was seen as essential, therefore, for the western European countries, was to get Germany on their side. As the war had divided Europe into two "blocks", the threat that the new, democratic German republic would turn Eastwards, thereby creating a new security threat from East of the Rhine, was constantly present. This fear was particularly apparent in France.⁶⁹

In the newly created German State, on the other hand, there was an urgent need to establish its credibility and reliability in international politics. There was also here a wish to put an end to the turbulence of Franco-German relations which had suffered greatly throughout history. Under such circumstances at the time it was quite apparent that the new German State could not take any initiatives for European cooperation or integration. It was prevented from acting in any manner that could arouse any neighbouring countries' fear of renascent nationalism. Such initiatives had to come from elsewhere, and the only country capable, with as much to gain, was France.

The post-war period faced the world with a Germany destroyed and divided after having lost two world wars in less than thirty years. Due to its turbulent past the new and democratic state needed to gain recognition among its more established partners in the post-war international order. What was expected of her was "good behaviour" and no leadership role was envisaged. European integration was adopted

⁶⁹ Bulmer and Paterson (1987) *The Federal Republic and the European Communities*, p. 226.

as one of the foundations of the German State, although it did not "shake off its occupation status and attain formal sovereignty until 1955".⁷⁰ To accept an open international economy, the security protection and the continued presence of the Western allies was, in fact, a pre-condition for its creation. As a consequence, Germany had, in the early years, a limited sovereignty over foreign affairs and defence. This aspect turned out to be an important factor in why it was interesting for Germany to join the later ECSC. Not only would close German integration in a supranational European Community be important to help the newly established democracy. Also, one could argue, as it already had a limited sovereignty, the thought of giving up more might have been less worrying.⁷¹ As it has been pointed out by Simon Bulmer and William Paterson in their book *The Federal Republic of Germany and the European Community*, it seems like a likely assumption that, due to Allied presence, "ECSC membership [...] represented a means whereby control of certain industries could be regained".⁷² Federalism was also familiar to Germany due to the federal political structure of the relatively autonomous "Länder". This structure was formally established with the adoption of the new constitution, the "Basic Law of the Federal Republic of Germany" in 1949.⁷³ National sovereignty had become less determinant in German policy after the Nazi period and the division of Germany.

With all these aspects in mind, it is no wonder that European integration was so important in Germany from the very start. Commitment to European integration can be seen as probably the most important element in the policies of the CDU-led governments of the first two decades of the new German State. European integration,

⁷⁰ Bulmer and Paterson (1987) p. 223.

⁷¹ The foreign policy of the new Federal Republic was at the time in the hands of the Allied countries, USA, France and Great Britain.

⁷² Bulmer and Paterson (1987) p. 223.

⁷³ Already during the Bismarck rule 1870-1914 had there been princely states, such as Bavaria and Hesse, with a certain amount of autonomy. See Herbert Jacob (1963) *German Administration Since Bismarck. Central authority versus local autonomy* (New Haven and London: Yale University Press).

and in particular Franco-German entente, was also the vision of the German Chancellor Konrad Adenauer, who came to play an important role in the setting-up of the ECSC.⁷⁴ Adenauer was a Roman Catholic from the Rhineland. With this background he had, according to Roger Morgan, "a deep distaste for everything connected with Berlin, Prussia and the east", which further made him "hostile towards both Socialism and Communism, and more favourably inclined towards France and Western European integration".⁷⁵ The way Adenauer saw it, European integration would offer Germany "a way back towards equality of status and the recognition of her national claims".⁷⁶ Another aspect for his inclination towards the west and European integration was his conviction that the atrocities of Hitler had happened due to Germany's isolated position in the middle of an unstable and divided European power system.⁷⁷ Nevertheless, the German choice of participating in the nascent European integration process was not made without opposition. Germany had to make a choice. By leaning towards the West, the already minimal prospect of a reunification with the East was further reduced. On the other hand, Germany needed export partners due to its dependence on foreign trade. The years 1933-1945 had been strongly characterised by an inward-looking, internal production which, after 1945, had turned towards an openness both of the economy and of the political system. It was this dilemma that caused a split between the Christian Democrats (CDU) and the Social Democrats (SPD) lasting until 1956. The latter was of the opinion that reunification efforts had to take priority over European

⁷⁴ As early as in 1924 Konrad Adenauer "considered favourably the idea that the best way to reconstruct Europe peacefully would be through a Franco-German agreement for some form of joint management of the coal, iron and steel industries of the Rhineland, eastern France and Luxembourg". Milward (1992) *The European Rescue of the Nation-State*, p. 330. According to Thomas Jansen, Adenauer's proposal came in 1923 for a "Franco-German Economic Community", where terms like "European Common Market" and "Coal and Steel Union" were also used. Bond, Smith and Wallace (1996) *Eminent Europeans. Personalities who shaped contemporary Europe*, p. 98.

⁷⁵ Morgan (1972) *West European Politics since 1945*, p. 107.

⁷⁶ Morgan (1972) p. 109.

⁷⁷ Ibidem.

integration. Adenauer, however, thought differently: "We shall not recover Berlin, we shall not recover the German East, except by way of a unified Europe."⁷⁸

The Federal Republic created in 1949 is the first German State in modern times, since 1972, to have enjoyed friendly relations with all its eastern and western neighbours. These relationships did, however, take place in a highly protected environment of NATO and the European Communities. Nevertheless, the 1950s must be regarded as highly formative years in the creation of the German economic structure and of its social market principles. Membership of the ECSC, therefore, ensured that integration became a key part of the post-war economic and political values in Germany. Germany, likewise, came to be an important ally of the European cause.

2.2 The influence of France

France, as a nation, had suffered deeply from the two world wars, materially as well as psychologically. During the second world war she had experienced the worst collapse since the Hundred Years War.⁷⁹ During both wars she had also had to rely on support from the United Kingdom and the United States for the defeat of Germany. France has been a unified state since the sixteenth century, with a highly centralised administration dating back to the seventeenth century. In her days of glory, from the seventeenth century until the fall of the Empire in 1814, she had been the dominant power in Europe. These factors must be taken into account when studying what motivated the Schuman Declaration and the establishment of the ECSC. Not only was there the need of a friendly economic and political coalition with Germany. It was important for France, as a former world power, that this would not be dominated by the United States and that it would be a cooperation

⁷⁸ Speech in a CDU meeting in Essen in 1952, welcoming the Pleven Plan initiative as an answer to the "Russian Fear". Willis (1968) *France, Germany and the New Europe 1945-1967*, p. 154.

⁷⁹ The Hundred Years War, between England and France, lasted more or less constantly from 1337 until 1453.

where she could regain the status and self-respect she had lost after the collapse in 1940. With these aspects in mind, there was a need, five years after the war, for something to be done, and it had to be initiated by France. This "something" meant a solution to the German problem which required a changing of the conditions that not only made the future uncertain for the Germans, but all the same for her neighbours. As Jean Monnet wrote in his notebook in 1950: "The course of events must be altered. To do this, men's attitudes must be changed. [...] Only immediate action on an essential point can change the present static situation. This action must be radical, real, immediate, and dramatic; it must change things and make a reality of the hopes which people are on the point of giving up."⁸⁰ Not only was it important to take rapid action, it also had to be in areas where misunderstandings were most likely, and where past errors would be repeated. The area was industry. France had already started feeling inferior to German dynamism. If she could lose her fear of German industrial domination, then it seemed the greatest obstacle to a united Europe would be removed. The essential thing was to get French industry on the same footing as the German, and, at the same time, free Germany of discrimination born of defeat.⁸¹

It was in the industries of coal and steel that European integration was to begin. They were seen as the key to economic power as well as the raw materials for forging weapons of war which, then, would give them an immediate symbolic

⁸⁰ Monnet (1978) p. 291. Jean Monnet was the General Commissioner for the Modernisation and Investment Plan for France (Plan de Modernisation et d'Equipeement, or simply "le Plan") 1946-49, appointed by General de Gaulle in 1945, to be the architect for France's economic recovery.

⁸¹ The Saar problem was very important in this connection. The area had changed several times between being under German and French rule. However, its inhabitants were mostly Germans in speech, political loyalty and way of life. In economical terms, on the other hand, the area was very important to France, especially after the Second World War. The Saar's output in coal and steel, if added to that of France, equalled the coal and steel output of West Germany. With the Saar remaining in West Germany, the latter's capacity would be nearly double that of France. After their severe loss of prestige and very real sufferings in the Second World War, France genuinely believed that there should be a "fair balance" of industrial power between their country and the new Federal Republic. Prittie (1972) *Konrad Adenauer 1867-1976*, pp. 174-75.

significance to the whole continent. A pooling of coal and steel industries across frontiers would, in this way, turn the coal and steel industries into a guarantee of peace. On 16 April 1950, the first version of what was to become the Schuman Declaration of 9 May 1950, was written by Jean Monnet, Paul Reuter and Etienne Hirsch.⁸² They suggested to place the production and distribution of coal and steel on a common basis, ensure that the two products were sold according to common rules, which would improve the overall social conditions and continually improve production. The end of the text, summarising the overall aim read: "This proposal has an essential political objective: to make a breach in the ramparts of national sovereignty which will be narrow enough to secure consent, but deep enough to open the way towards the unity that is essential to peace."⁸³ According to the French Foreign Minister Robert Schuman "the aim of the proposal was not economic but highly political".⁸⁴ The proposal for a coal and steel community had a particular meaning for Schuman himself. He came from Luxembourg and moved later to Lorraine where he became a German citizen as a result of the annexation of Alsace-Lorraine by Germany after the 1870 war. He grew up a German and served as an officer on the German side in the First World War, while his father had served as a French officer in the war of 1870. In 1919 he became a Frenchman, for the first time, in his early middle-age.⁸⁵ Amongst the French, however, the fear was still great that there would be another attack from Germany once she had recovered. Possibly, it was believed, that there would be a corresponding desire for greater

⁸² Paul Reuter was a Professor of Law at the University of Aix-la-Chapelle. Etienne Hirsch had been in the Planning Commissariat for Modernisation of France together with Jean Monnet.

⁸³ Monnet (1978) p. 296.

⁸⁴ Robert Schuman in a letter to Konrad Adenauer (*Erinnerungen*, Vol I, 1945-53, pp. 314-15). In: Monnet (1978) p. 303.

⁸⁵ Prittie (1972) pp. 177-78. According to Richard Mayne, Schuman never wore a German uniform as he failed the medical test. Instead he was seconded to the civil administration. Hence, "a photograph of him in a German helmet published by the French Communist press in the 1950s was a fake". In 1919 he was "elected to the French Chamber of Deputies as representative of the Moselle". Bond, Smith, Wallace (eds.) (1996) pp. 23-24. Robert Schuman was born in 1876 and died in 1963.

security in Germany.

Konrad Adenauer was very pleased with the French proposal, glad that something he had dreamt about for many years finally would come true. In his own words: "The proposal that France has just made to us is a generous move. It is a decisive step forward in Franco-German relations. It is not a matter of vague generalizations, but of concrete suggestions based on equal rights."⁸⁶ A month later there was a meeting between the two great Europeans Jean Monnet and Konrad Adenauer where the latter assured that "In accepting it, my Government and my country have no secret hankerings after hegemony. History since 1933 has taught us the folly of such ideas. Germany knows that its fate is bound up with that of Western Europe as a whole."⁸⁷ Great achievements were made in those days of the spring of 1950, decisive for the future of the European peoples. Six countries, France, Germany, Italy and Benelux, had welcomed the Schuman Plan providing a basis for the building of a new Europe through the achievement of a supranational regime within a limited but controlling area of economic effort. "The indispensable first principle of these proposals is the abnegation of sovereignty in a limited but decisive field [...] in my view, any plan which does not involve this indispensable first principle can make no useful contribution to the solution of the grave problems that face us."⁸⁸

2.3 The Schuman Plan Negotiations

Negotiations had been going on with the United Kingdom about the Schuman Plan from the very beginning. The proposal of a Franco-German reconciliation was indeed welcomed by the British Prime Minister Attlee as he spoke in the House of

⁸⁶ Konrad Adenauer accepting the French proposal on 9 May 1950. Monnet (1978) p. 304.

⁸⁷ Monnet (1978) p. 310.

⁸⁸ Jean Monnet in a letter about the nature of the High Authority, Strasbourg, August 1950.



Commons on 11 May 1950.⁸⁹ Nevertheless, the British were not going to commit themselves to principles without knowing beforehand all the details about the practical consequences. That was something no one could foresee at the time. There was also opposition to the idea of federalism and the fact of having to give up some of its independence. The United Kingdom was in quite a different position from the continent at the time just after the war, as she had not been neither conquered nor invaded. Also there was concern about losing the general well-being flowing from the growing welfare state. "We must be with France" Winston Churchill claimed in his speech in Edinburgh on 18 May 1950. He saw the recovery of Europe as dependent on "Britain and France standing together with all their strength and all their wounds, [...] offering their hands to Germany on honorable terms and with a great and merciful desire to look forwards rather than back". Nevertheless, he continued his speech by saying that although the "Schuman proposal is right in principle we must consider with proper attention the way in which Great Britain can participate most effectively in such a larger grouping of European industry. We must be careful that it does not carry with it a lowering of British wages and standards of life and labour."⁹⁰

It was not only the United Kingdom that was sceptical of the plans of a coal and steel community. Opposition came also from Germany, and France itself. There were certain feelings among the German Socialists that they were in fact "accepting occupation for another fifty years".⁹¹ In France the opposition came from the Gaullists and from the extreme Left, with a general fear of German industry becoming too dynamic and dominating. Others, like Pierre Cot from the extreme

⁸⁹ Monnet (1978) p. 306.

⁹⁰ Scottish Unionist Meeting. A Speech at the Usher Hall, Edinburgh 18 May 1950. In: *"In the Balance"*, Speeches 1949 and 1950 by Winston S. Churchill. Edited by Randolph S. Churchill. Cassell & Company Ltd., London 1951, pp. 279-280.

⁹¹ The opinion of the German socialist leader Kurt Schumacher (SPD). Monnet (1978) p. 319.

Left called the whole thing a dream.⁹² As for this, to overcome attempts of the opposition to spoil the plan, it was important to define the institutional framework of the ECSC, and in particular to set up the High Authority, and to have the treaty rapidly signed and ratified. The important significance of what was about to happen was well put by Robert Schuman at the Schuman Plan Conference in June 1950: "We believe that we cannot afford to fail, to give up without reaching a conclusion. But never before have States undertaken or even envisaged the joint delegation of part of their national sovereignty to an independent supranational body."⁹³

The other four countries accepting the Schuman Plan, the Benelux countries and Italy, had indeed welcomed the initiative. The three Benelux countries had already established close relations in the Monetary Convention of 1943 and the Customs Convention of 1944. This was the oldest of the post-war arrangements for integration in Europe, and although it only went as far as a customs union, it must be seen as a "pilot project" for the later Common Market. In Italy the Movimento Federalista Europeo had been founded in 1943 by three great Europeans, Altiero Spinelli, Ernesto Rossi and Eugenio Colorni.⁹⁴ However, after twenty years of fascism, Italy had a long way to go in reconstructing its economy as well as building a new political system. Italy needed to regain a position of equality in the international environment and had therefore little opportunity to seek a role in uniting Europe. The French initiative, however, was immediately welcomed by the Italian Government and the Schuman Plan was seen as an assurance to the Italians who feared German military resurgence. She also felt the need to take part to lessen the fears of a Franco-German hegemony in western Europe. Despite their enthusiasm, however, it was the Benelux countries that were going to cause the biggest problems during the negotiations of the treaty to set up the ECSC. The hardest was to make them all look at the task from the same point of view and to tackle it in common. They needed to change their views and talk about the "European" coal and steel

⁹² Monnet (1978) p. 365.

⁹³ Monnet (1978) p. 322.

⁹⁴ Altiero Spinelli was the leader of the Movimento Federalista Europeo 1943-1962.

industry as opposed to for example the Italian or the French industry. This was also meant to put the common interest above purely national concerns. A further difficulty was to convince, in particular the Belgian and the Dutch delegates, that although Franco-German reconciliation was the means to the Schuman Plan's goal of peace, this would not be achieved at the expense of the smaller nations. Moreover, it was due to their scepticism that the governments were given a role in the Community through the Council of Ministers. This was something that Jean Monnet originally did not have in mind. He had decided against including any intergovernmental body in the Community's institutions, wishing to stick to the principle of supranationalism.

The nature of the executive body to be set up, the High Authority, caused a number of concerns among the Benelux delegates. As a representative of the Benelux views, the Belgian delegate Maximilien Suetens expressed: "My government is not prepared to give the High Authority excessive powers. That would make it an object of fear; and besides, no such powers are needed to achieve our aims. These can be attained more simply, by prior agreement among the States concerned [...] The supervisory body should be the Ministers, who effectively exercise power."⁹⁵ Further, the Netherlands' principal negotiator of the Treaty of Paris and later member of the High Authority, Dirk Spierenburg, expressed an anxiety that "the High Authority might exert dictatorial powers over the coal and steel industries without being accountable to anyone".⁹⁶

Such opposition and scepticism were carefully calmed down by Monnet's convincing negotiating skills. He was also helped by the German delegate Walter Hallstein⁹⁷ who proclaimed: "The German Government reaffirms that the

⁹⁵ Monnet (1978) p. 327.

⁹⁶ Dirk Spierenburg to the Ministry of Economic Affairs, 29 May 1950. In: Spierenburg and Poidevin (1994) *The History of the High Authority of the European Coal and Steel Community. Supranationality in Operation*, p. 12.

⁹⁷ Walter Hallstein was the head of the German delegation to the Treaty of Paris negotiations and was later to become the first President of the EEC Commission in 1958.

importance of the Schuman Plan is above all political [...] That is why the German delegation appeals urgently to all members of this conference to subordinate their economic interests to this great political goal. The war that has just broke out in Korea gives Europe yet another reason for uniting, for the peace of the world is under threat."⁹⁸ This was indeed a clear indication that France and Germany were still eager to get the plan working, which was the real crux of the matter.

The Benelux countries, however, would not abandon the idea of a body of government representation. At a Benelux meeting on 14 June 1950 the setting-up of a Council of Ministers as a control on the political decisions of the High Authority was proposed by the Dutch delegation. It has been suggested that the reasons for this proposal coming from the Benelux countries, Belgium and the Netherlands in particular, was a fear of supranationalism. It was felt as uncertain how the smaller countries of the proposed community would be represented in a truly supranational High Authority without there being some sort of governmental control. A further, and maybe even more important explanation which Marcel Frerotte has pointed out in his article, was the fact of a supranational presence in the French, German and Italian constitutions. In his words: "*à l'invers des constitutions nouvelles de la France, de l'Allemagne et de l'Italie, qui autorisent le gouvernement à aliéner sa souveraineté au profit d'une institution supranationale, rien de pareil ne se trouve dans les constitutions des pays du Benelux*".⁹⁹ It was further felt that, as the High Authority "would have important economic implications to the national economic policies", there would be a need for ministers who were responsible before national parliaments, something which would make them more accountable to reactions from public opinion.¹⁰⁰

⁹⁸ At the Schuman Plan Conference, July 1950. Monnet (1978) p. 328.

⁹⁹ Marcel Frerotte, *La CECA*. In: *Studia Diplomatica* (1981) p. 267. "Contrary to the new constitutions of France, Germany and Italy, which authorise the governments to give up sovereignty to the benefit of supranational institutions, a similar authorization is not to be found in the constitutions of the Benelux countries." Own translation.

¹⁰⁰ *Studia Diplomatica* (1981) p. 270. Own translation. "*l'action de la Haute Autorité pouvait avoir des implications importantes pour les politiques économiques*

During the Schuman Plan Conference in July 1950, the system acquired a definite form. The institutional structure of the future, it was agreed, was going to consist of a supranational authority, the High Authority, a council of national Ministers, the so-called Special Council of Ministers, as well as a Common Assembly and a Court of Justice providing parliamentary and judicial control. This decision was issued in a Memorandum by the Six of 5 August 1950. From then on it did not take long before the Treaty of Paris was signed and ratified, all in a matter of two years.¹⁰¹

*"L'Europe ne se fera pas d'un coup, ni dans une construction d'ensemble: elle se fera par des réalisations concrètes créant d'abord une solidarité du fait."*¹⁰²

These words came to mean a whole lot during the spring of 1950. Already a concrete achievement had been made with the French proposal of the Schuman Declaration and the ECSC. Although a French proposal, originally initiated by Jean Monnet, the negotiations made sure that it would become a joint work in the end. The idea to pool the coal and steel industries of France and Germany was one of great significance that would eliminate the "age-old opposition between France and Germany". As the famous quote by Robert Schuman says: "the solidarity [...] thus achieved will make it plain that any war between France and Germany becomes not only unthinkable but materially impossible".¹⁰³ The supreme goal of the proposal was to create lasting peace among the European nations. Other important goals were to overcome the French fear of the dynamic and dominating German industry, and the German need to re-establish its credibility and reputation in the international

nationales."

¹⁰¹ All the six national Parliaments had ratified the ECSC Treaty of Paris by July 1952.

¹⁰² Monnet (1978) p. 300. From the Schuman Declaration of 9 May 1950. "Europe will not be built at once, or as a single whole: it will be built by concrete achievements which first create *de facto* solidarity."

¹⁰³ *"La solidarité de production qui sera ainsi nouée manifesterà que toute guerre entre la France et l'Allemagne devient non seulement impensable, mais matériellement impossible."* The Schuman Declaration of 9 May 1950. Jean Monnet Fondation (1985).

environment. This was done through the creation of an institutional framework in which all member States had an equal role according to size and population; an institutional framework which had not been seen before.

3. THE HIGH AUTHORITY

"Si vous ne faites pas de politique, elle se fera sans vous et contre vous." W. E. Gladstone, cited by Jean Rey.¹⁰⁴

Ideas about the uniting of Europe were not something new in the aftermath of the Second World War. The French writer and scholar Alexis de Tocqueville expressed already in 1835 that "[T]he nations seem to be advancing to unity", and that it would be "impossible for men to remain strangers to each other".¹⁰⁵ In particular reference to the wars and struggles in Europe he believed that "God destines a calmer and more certain future to the Communities of Europe".¹⁰⁶

Although de Tocqueville's prophesies or wishes did not come true in his lifetime, they were to live on for more than a century. In 1919, as the First World War had ended, the first efforts were made to reform international relations with the creation of the League of Nations. It turned out to be a mainly European body and one of the key initiators was the Frenchman Jean Monnet. In 1929 another French visionary, Aristide Briand,¹⁰⁷ came with a proposal for "a United States of

¹⁰⁴ Fenaux (1972) *Jean Rey, enfant et artisan de l'Europe*, p. 190. "If you do not take part in politics, things will be done without you and against you." Own translation.

¹⁰⁵ Alexis de Tocqueville. *Democracy in America*. In: Hallstein (1962) *Uniting Europe: Challenge and Opportunity*, p. 2.

¹⁰⁶ Hallstein (1962) p. 3.

¹⁰⁷ Aristide Briand had served eleven times as premier of France and held twenty-six ministerial posts between 1906 and 1932. In April 1925 he became Foreign Minister, a post he held in fourteen successive governments, four of which he headed himself. *The New Encyclopædia Britannica*, Vol. 2, 15th edition 1991.

Europe".¹⁰⁸ The main motive behind this proposal, which later came to be the motive behind the establishment of the European Coal and Steel Community, was the need to settle a unifying and peaceful relationship between France and Germany. The idea was that to stabilize the situation on the European continent and make the peace last, France and Germany would have to be tied closer together in common interests. When Europe in the late 1940s and early 1950s had just lived through another great war, this became clearer to even more people; statesmen and others. The feeling was growing among the European people that in the new world of superpowers, the old nation-states of Europe would have to band together. Europe's position in the world had been altered drastically as a result of the war as well as by the growth of the United States and Russia. People also saw that nations became increasingly interdependent with the pressure of technology and a growing communication.

In 1947 the American Secretary of State George Marshall came up with a plan for economic aid to Europe. The result became the creation of the Organisation for European Economic Cooperation (OEEC) which was seen by many as the first step towards a European Union, and strongly supported by the Americans. However, for those hoping for a real and rapid unity of Europe, the OEEC was disappointing by not going far enough. The OEEC was set up primarily on the initiative of the American Government in order for the European countries to organise and distribute the Marshall Aid amongst themselves, by themselves. To be able to achieve this goal, the Americans believed in some sort of European integration. However, as an integrating organisation, it was considered to be too loosely structured, with too many member countries and no supranational powers. Much the same was the case with the Council of Europe, set up in May 1949 between 18 member States. This organisation was based on the exchange of ideas and information on social, legal and cultural matters. Pressure for the uniting of Europe in a political and economic union, as well as a European Assembly and a European Court, began to come from

¹⁰⁸ "Je pense qu'entre des peuples qui sont géographiquement groupés comme les peuples d'Europe, il doit exister une sorte de lien fédéral." Aristide Briand at the sixth plenary session of the Assembly of the League of Nations, 5 September 1929. In: Achille Elisha (1965) *Aristide Briand. Discours et écrits de politique étrangère* (Paris: Plon) p. 220.

leaders of private organisations in the European countries. However, different countries with different views resulted in an Assembly which was not allowed to set its own agenda, and a Committee of Ministers bound by unanimous voting, which meant that it could be subject to veto by any single member.¹⁰⁹

The real start of what was to become the European Coal and Steel Community came on 9 May 1950 with the Schuman Declaration by the French Foreign Minister Robert Schuman. The Declaration read:

"World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it. [...]

Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. [...]

[The French Government] proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organisation open to the participation of the other countries of Europe.

The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe, and will change the destinies of those regions which have long been devoted to the manufacture of war, of which they have been the most constant victims. The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all member countries with the basic element of industrial production on the same terms, will lay a true foundation for their economic unification. This production will be offered to the world as a whole without distinction or

exception, with the aim of contributing to raising living standards and to promote peaceful achievements. [...] By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the presentation of peace. [...]"¹¹⁰

¹⁰⁹ The Congress of Europe, May 1948, the immediate progenitor of the Council of Europe. Hallstein (1962) pp. 8-9.

¹¹⁰ Pascal Fontaine, *Europe: A Fresh Start. The Schuman Declaration 1950-90*. European Documentation 1990, pp. 44-46.

In the short run it was believed that by pooling the production of coal and steel, the establishment of common bases for economic growth would be assured. In the long run it would serve as a means to peace among the European countries as the two materials coal and steel had been the basic material used in the military industry of the two world wars.¹¹¹ Schuman and his advisers, most notably Jean Monnet, also hoped that such an initiative would lead towards a European Federation which would mean an even tighter cooperation and, hence, a war between France and Germany would "not only be unthinkable" but also "materially impossible". The creation of common institutions for coal and steel production would, therefore, in the eyes of Schuman and Monnet, only be the beginning of what was to come. However, it was though necessary to start on a smaller scale to create the kind of solidarity that was needed.

As the work went on after the Schuman Declaration, the negotiations between France and Germany were joined by Italy and the three Benelux countries, Belgium, Luxembourg and the Netherlands. The United Kingdom had been invited to take part but "refused to accept in advance the basic principles and commitments contained in the declaration of 9 May".¹¹² On 18 April 1951 the Treaty establishing the European Coal and Steel Community (ECSC) was signed in Paris. The Community aimed to be supranational, practical and partial, and would abolish the economic effects of frontiers between the signatory countries in the sector of coal and steel. By July 1952 the Treaty had finally been ratified by the Parliaments of the six countries. The Six met in Paris on 23 July 1952 to appoint the members of the High Authority, as well as to sort out the official languages and the site of the institutions.¹¹³ The members were appointed by the end of July and on 10

¹¹¹ Others had already before seen the importance of the European coal and steel industries. Adolf Hitler said during World War II that "[T]o control coal and steel is to control Europe". René Foch, *Europe and Technology*. The Atlantic Papers 2, 1970, The Atlantic Institute, p. 7. This had, of course a different meaning, but it nevertheless implies the importance of these two industries at the time.

¹¹² Spierenburg and Poidevin (1994) p. 11.

¹¹³ This was not sorted out until the Merger Treaty of 1967 where it was left open for the governments of the member States to decide. Article 77: "The seat of

September 1952 the High Authority of the ECSC held its first meetings in Luxembourg where the Community was to set up offices. As Jean Monnet recalled in his *Mémoires*: "On the morning of August 10, 1952, Europe came to Luxembourg".¹¹⁴

3.1 The work of the High Authority

The High Authority was first mentioned in Article 7 of the ECSC Treaty where it said that "[T]he institutions of the Community shall be as follows: a HIGH AUTHORITY, assisted by a *Consultative Committee*;...".¹¹⁵ Article 8 of the same Treaty said further that "[T]he High Authority shall be responsible for assuring the fulfillment of the purposes stated in the present Treaty under the terms thereof."¹¹⁶ The High Authority was the executive body of the ECSC and its powers and duties were dealt with in Chapter I of the Treaty, Articles 9 to 19. The High Authority consisted of nine members and worked as a collegiate agency. The members were appointed for a period of six years. Eight of the members were appointed by the member governments by common agreement and the ninth member was co-opted, which means that this member was "elected by the majority vote of the eight already chosen".¹¹⁷ Only representatives from the member States could be appointed and there could not be more than two representatives of the same nationality. The members had to exercise their functions in complete independence and in the general interest of the Community. They could not solicit or accept any instructions from

the institutions of the Community will be determined by common accord of the Government of the Member States."

¹¹⁴ Monnet (1978) p. 372.

¹¹⁵ Article 7 ECSC: "*Les institutions de la Communauté sont: - une HAUTE AUTORITE, assistée d'un Comité Consultatif; (...)*"

¹¹⁶ Article 8 ECSC: "*La Haute Autorité est chargée d'assurer la réalisation des objets fixée par le présent Traité dans les conditions prévues par celui-ci.*"

¹¹⁷ Article 10 ECSC, 1st paragraph: "*Les membres des Etats membres nomment d'un commun accord huit membres. Ceux-ci procèdent à la nomination du neuvième membre, qui est élu s'il recueille au moins cinq voix.*" Ernst B. Haas (1958) p. 42.

their individual governments or any other member State's government. This last point was all in accordance with the supposed supranational character spelled out in Article 9 whereby the members "will abstain from all conduct incompatible with the supranational character of their functions. Each member State agreed to respect this supranational character and to make no effort to influence the members of the High Authority in the execution of their duties."¹¹⁸

As has been shown above, the High Authority had powers which were normally only enjoyed by national governments. The High Authority acted by majority vote which could take three different forms. In the form of a decision it meant that the High Authority was binding in every respect. A recommendation was binding with respect to the objectives but not as regards the means by which those objectives shall be achieved, and lastly the High Authority could come up with opinions which were not binding in any respect.

As the executive body of the ECSC the High Authority had direct powers of decision on most matters covered by the Treaty. It was only on questions of broader policy that decisions required consent by the Council of Ministers. The main function of the High Authority was to secure the realization of the aim of the Community, being "economic expansion, the development of employment and the improvement of the standard of living in the participating countries".¹¹⁹ To ensure this the High Authority had to make sure that there were no import or export duties on the movement of coal and steel within the Community, that no discrimination among producers, buyers or consumers was being practiced, and that no state imposed any subsidies or other types of state assistance. Concerning the industries of coal and steel, the High Authority also made decisions regarding prices, tariffs, transport rates

¹¹⁸ Article 9 ECSC, 6th paragraph: *"Chaque Etat membre s'engage à respecter ce caractère supranational et à ne pas chercher à influencer les membres de la Haute Autorité dans l'exécution de leur tâches."*

¹¹⁹ Article 2 ECSC, 1st paragraph: *"... à l'expansion économique, au développement de l'emploi et au relèvement du niveau de vie dans les Etats membres."*

and similar matters. Decisions taken were immediately binding on the enterprises concerned without need for any action by national authorities, which was considered the essence of the supranational power of the High Authority. In addition to the powers just mentioned, the High Authority had the power to raise the money necessary for the operation of the Community by placing levies on the production of coal and steel. These levies was to be paid directly to the High Authority itself.

There were a number of checks and balances in the Treaty of the ECSC. A reason for that was to satisfy the member State governments in making sure that the powers of the High Authority did not become too wide. This was especially true for the Benelux countries who insisted on a Council of Ministers being set up, representing the individual member States. Its purpose was to coordinate the actions of the High Authority and those of the national governments responsible for the general economic policy in each of the six countries. The Benelux countries, being smaller nations, were afraid of a too strong Franco-German dominance in a "supranational" High Authority with excessive powers. Therefore, at a meeting on 7 June 1950 the three countries worked out a common proposal for an "equal representation on a board made up of government-appointed members". A few days later, on 14 June, "the Dutch delegation proposed the creation of a Council of Ministers to control the High Authority's political decisions."¹²⁰ This had not been included in the original Schuman Plan and was not immediately welcomed by Jean Monnet.¹²¹ Nevertheless, at the inaugural meeting of the Council of Ministers on 8-10 September 1952, Monnet emphasised the Council's vital task as ensuring "that there would be 'constant harmony between the activities of the Community and those of the member states'".¹²² The High Authority, it was decided, had to consult the Council in a number of cases, among them the establishment of the levy. The

¹²⁰ Spierenburg and Poidevin (1994) p. 12-13.

¹²¹ According to Pierre Uri, Jean Monnet had thought this was a good idea and wished he had thought of it himself. It was considered a body which could be more or less equivalent to the German 'Bundesrat'. Interview with Pierre Uri on 9 January 1989. The Historical Archives, European University Institute, Florence.

¹²² Spierenburg and Poidevin (1994) p. 59.

Council of Ministers, on the other hand, could only oppose High Authority decisions unanimously.¹²³

The Common Assembly was a body consisting of representatives from the parliaments of the six member States. The Assembly had to receive and debate the annual reports of the High Authority, and it also had the power of enforcing the collective resignation of the High Authority by vote of censure in cases where it might reject the High Authority's policy. One of the criticisms of the Common Assembly was that it was not a directly elected parliamentary institution. Nevertheless, its members were, before being appointed to the Common Assembly, elected by the people to their national parliaments. In some ways, therefore, it could be seen as enjoying some kind of democratic control.¹²⁴

The Court of Justice was designed as another control upon the work of the High Authority. If decisions and recommendations were found not to be in accordance with the Treaty they could be annulled by the Court. Its role was, thus, crucial in establishing a pattern of "narrow", or strict Treaty interpretation. The Court did on some occasions take action against the High Authority where it felt that the latter had acted contrary to the Treaty. Jean Monnet was in favour of this as it was seen to be "a new proof of the effective functioning of the institutions of the Community" as federal organs.¹²⁵

The Consultative Committee, an advisory body consisting of between 30 and 51 members, was set up to provide the High Authority with assistance and "expert" advice. The members of the Consultative Committee were producers, workers, consumers and traders, representing the economic and social interests of society. The High Authority was obliged to consult the Committee on a number of cases listed in

¹²³ Article 28 ECSC.

¹²⁴ Article 20 ECSC: *"L'Assemblée composée de représentants des peuples des Etats réunis dans la Communauté, exerce les pouvoirs de contrôle qui lui sont attribués par le présent Traité."*

¹²⁵ Quoted in Haas (1958) p. 474.

the Treaty as well as to keep it informed about its activities in the field of investments, cartels and concentrations.¹²⁶

3.2 The Supranational character of the High Authority and the Federal aim of the ECSC

In the dictionary the term "supranationalism" is explained as "overriding national sovereignty; in belonging to, more than one nation. Outside the authority of a single national government".¹²⁷ In other words, a supranational organisation is one which is over and above the individual participating national States. Such an organisation can take decisions that are binding on governments without necessarily receiving their prior consent. It is here that lies the difference between supranational and international where the latter has a rule of unanimity, meaning that no state can be bound without its prior approval. The term "supranational" was first mentioned in debates in the Consultative Assembly of the Council of Europe during the summer of 1949. However, it was always understood as something "*subordinated* to all governments".¹²⁸ The first time it was used to describe an actual body, or one that was to be set up, was in the ECSC Treaty describing the High Authority. By the founding fathers it was used as a way of distinguishing the Community as it was from the ultimate aim of full federation, which would be achieved by way of supranationality.¹²⁹ While explaining his plan to the Consultative Committee of the Council of Europe on 10 August 1950, Robert Schuman expressed his opinion on the High Authority saying that "[T]he Authority thus set up will be the first example of an independent supranational institution".¹³⁰

In Schuman's view the supranational element represented "a new step in the

¹²⁶ Articles 18 and 19 ECSC.

¹²⁷ Collins English Dictionary.

¹²⁸ Robertson (1957) *Legal Problems of European Integration*, p. 144.

¹²⁹ Haas (1958) p. 32.

¹³⁰ Robertson (1957) p. 145.

gradation of powers", where these powers must be placed somewhere above the national level but had not yet attained the status of federal authority.¹³¹ One could argue, however, that the High Authority and the ECSC possessed through the Treaty the formal attributes necessary to make it an agent of European integration. It was empowered to make policy binding on the governments as well as on the coal and steel industries directly. It also had the powers of taxing, lending, borrowing, planning and rule-making. Nonetheless, when it came to the national governments, they were considered by the High Authority as the crucial limits on supranational policy. The High Authority had, according to the Treaty, the power to make decisions that would be binding as well for the national governments. However, it had no real means of enforcing these decisions. One can assume that national governments would not recognise any authority above themselves. However, when it came to the Council of Ministers it could be assumed, as this was made up of representatives of national governments, that the latter would be bound by such decisions.¹³² As considered by Jean Monnet, the first President of the High Authority, the High Authority was "the repository of the European General Will, with the evil governments merely the spokesmen for the selfish particular wills".¹³³ In this point of view the national governments were considered as the crucial limits on a supranational policy. The Treaty of the ECSC, as administered by the High Authority was, according to Jean Monnet, the basic European consensus for progress, peace and federation.

As mentioned above, the High Authority had the power to give orders directly binding to the enterprises concerned, as well as to impose fines and penalties

¹³¹ Robertson (1966) *European Institutions: Cooperation, Integration, Unification*, p. 136.

¹³² Haas (1958) p. 47.

¹³³ Haas (1958) p. 456. Rousseau talked about the general will as something that "constitutes order, the supreme rule, and this general and personified rule is what I call the Sovereign." He argued further that the existence of a political authority would guarantee that relations between men would have some kind of regularity. However, there would have to be a sovereign which would give the general will the dominant place. Maurizio Viroli (1988) *Jean-Jacques Rousseau and the 'well-ordered society'* (Cambridge University Press) p. 188.

on these enterprises. In cases where fines were not paid the High Authority could withhold money from the enterprise in question. However, it must be said that the High Authority's power of enforcement was, in the end, through the medium of national governments which is in fact what limits the "supranational" element. In other important national spheres like monetary, fiscal, foreign economic, wage and social welfare policies, the High Authority was restricted to performing studies and giving advice.¹³⁴

Although the national governments were considered as the main limit upon the supranational it had also proved difficult for the governments to resist the facts and recommendations put before the Council by the High Authority. In cases where a government was determined to argue but found itself unable to formulate the necessary compromise, the High Authority was asked to step in and mediate. Nevertheless, if a government was determined not to find a federal solution to a problem, the High Authority initiative would be neither solicited nor respected.

The German politician and Vice-President of the High Authority, Franz Etzel, was of the opinion that the ECSC should be a test for the functioning of supranational institutions. Therefore, he said, "political cooperation must already now be exercised in such a manner as to develop a lively and close relationship between the High Authority and the Common Assembly".¹³⁵ Supranationality, Haas argued, "in structural terms, [...] means the existence of governmental authorities closer to the archetype of federation than any past international organisation, but not yet identical with it. [...] the remaining limits on the ability to implement decisions and to expand the scope of the system independently still suggest the characteristics of international organisation".¹³⁶ He further pointed out the fact that the High Authority did not make a consistent use of the Assembly in stressing the application of supranational solutions in discussions with the six governments. In disagreements

¹³⁴ Haas (1958) p. 58.

¹³⁵ Franz Etzel in a speech at Handelshochschule St.Gallen. In: Haas (1958) p. 478.

¹³⁶ Haas (1958) p. 599.

with the majority of the colleagues on a narrow Treaty interpretation, the individual members of the High Authority did not seek support from their political friends in the Assembly.¹³⁷ This was a sign of no real political support existing between the High Authority and the Assembly which should be the characteristic of a federal system. The relations between the High Authority, the Assembly and the Council seemed to violate the federal logic that had been insisted strongly upon by Jean Monnet already from the start.¹³⁸ It was a fact that supranationality was a new concept and had not been used to describe any earlier organisation. Attempts were made by several of its contemporaries and people involved in the setting-up of the ECSC and the High Authority to define supranationalism. As Ernst B. Haas saw it: "[S]upranationality in operation - as distinguished from structure - depends on the behaviour of men and groups of men".¹³⁹

The European Coal and Steel Community was a non-exclusive organisation, open to all European countries wishing to join. It was further thought to be the first step in the direction of a unification of Europe. The Community also had the purpose of demonstrating the technical and practical feasibility of economic integration and thereby to act as precursor to the extension of this Community. The question remains whether the High Authority managed to fulfil this purpose or whether it merely acted as a vigorous coal and steel executive.

Among the industrialists of the six member States there seems to have been a general satisfaction with the supranational policy, and loyalty was shown towards the High Authority and its decisions even when the decisions had been opposed. It might seem, therefore, that the High Authority was an active agent in the redirection of loyalties and expectations towards a federal focus. It is also known that the Common Assembly at several occasions voted according to political conviction and

¹³⁷ Remark made by Max Kohnstamm, Secretary of the High Authority, 1954. In: Haas (1958) p. 479.

¹³⁸ Haas (1958) pp. 478-479.

¹³⁹ Haas (1958) p. 59.

not according to nationality,¹⁴⁰ which seems to indicate the existence of a certain amount of supranationalism in the Community, or at least some feeling of Community spirit.

One of the difficulties in the work of the High Authority was the fact that it was very important at all times to keep a good relationship with both France and Germany. This was to make sure that the old conflict between the two countries would not blow up again and that, instead, the relationship between them would be kept good and stable. This is one of the reasons why the High Authority was rather unwilling to risk opposition and unpopularity by giving an energetic federal interpretation to powers which it possessed, and thus disappoint groups and governments expecting a positive federal policy. Under the presidency of Jean Monnet it was decided that no disagreement between the members of the High Authority was to come out public. As Haas put it: "[V]oting is avoided as a general practice; only if a negotiated consensus seems unobtainable does the simple majority voting rule become operative. No information of possible differences of opinion among the members is permitted to reach the public."¹⁴¹ This was further verified by Albert Coppé, the Belgian member of the High Authority from 1952. He has pointed out the fact that "Monnet did not like to take a formal vote for the risk of putting the Germans in a minority position". He would therefore always try to get an agreement with the Germans before the start of negotiations or discussions. Coppé did not share this concern and would always insist on holding a vote, but to no avail.¹⁴²

The ECSC's institutional structure, consisting of an executive, a Council of

¹⁴⁰ One of these occasions was when Paul-Henri Spaak was elected by the Common Assembly to sit on the ad hoc Constitutional Committee in September 1952. Knowing that the Common Assembly had no legislative power, however, this might arguably be seen as a rather minor factor. Monnet (1978) p. 382.

¹⁴¹ Haas (1958) p. 452.

¹⁴² Interview with Albert Coppé. Archives of the European Communities, European University Institute, Florence.

Ministers, a Common Assembly and a Court of Justice, bears many resemblances to that of a federation of states, despite the presence of the Council of Ministers and the restrictions put on the High Authority, as well as the lack of legislative powers given to the Common Assembly. Nevertheless, there existed certain hopes for the future. The ECSC Treaty was set up for a period of fifty years, with no withdrawal clause included.¹⁴³ The founding fathers expected a full federation to have replaced the existing multi-state system in Europe by the end of this period. As Maurice Lagrange¹⁴⁴ concluded: "Thus, the supranational institutions of the Schuman Plan definitely constitute the precursors of future federal European institutions."¹⁴⁵ Nevertheless, the High Authority was to discover that no integration could proceed against the will of the national governments involved. This could be considered as a reason why the High Authority was not able to make use of its extensive supranational powers and came to consult the Council far more often than envisaged in the Community Treaty. In Haas' opinion it was "the considered policy of the High Authority to consult the Council of Ministers on every major decision, whether such a step is required by the Treaty or not".¹⁴⁶

The High Authority has often been referred to as Europe's first supranational institution. Moreover, being the first one meant that it had to deal with a lot of new problems and probably the most important one was to convince the governments of the participating states that the Community was working for the good of the whole Community, which in the end would be for the good of the individual member states.

¹⁴³ Article 97 ECSC: "*Le présent Traité est conclu pour une durée de cinquante ans à dater de son entrée en vigueur.*"

¹⁴⁴ Maurice Lagrange was an Advocate General in the Court of Justice between 1952 and 1964. He took part in the negotiations for the Treaty of Paris as an expert, representing France.

¹⁴⁵ Maurice Lagrange (1953) *Le caractère supranational des pouvoirs et leur articulation dans le cadre de la CECA*, p. 34. "*Ainsi, les institutions supranationales du Plan Schuman constituent bien la préfiguration des futures institutions fédérales européennes.*"

¹⁴⁶ Haas (1958) p. 480.

4. THE DEVELOPMENT OF THE HIGH AUTHORITY AND ITS ADMINISTRATION

*"Rien n'est possible sans les hommes, rien n'est durable sans les institutions."*¹⁴⁷

4.1 Setting up the High Authority

With the establishment of the ECSC, a whole new political and administrative form had been established in that area of international administration. It was not merely a classical international cooperation between states. The executive body of the ECSC, the High Authority, had been delegated powers in the fields of coal and steel and was to function to a certain degree independently from the national governments.

In the history of European integration until the Second World War, the idea of the sovereignty of the States had been the dominating factor. In the postwar period, however, the States' absolute sovereignty came to be considered as an obstacle to the organisation of peace and to the construction of a united Europe. Experiences with the Council of Europe and the OEEC had particularly shown the insufficiency caused by the rule of unanimity and intergovernmentalism. At this period in time a need was felt for an organisation which would be above the member States, as well as securing the equality among the States involved, including Germany. Other European organisations from the past, like the League of Nations and the International Authority of the Ruhr, had both involved Germany but in a discriminatory way as a result of the two world wars. In the postwar period, however, it came to be understood that a working and lasting cooperation needed to build on equality among all states involved. Germany was also important to the western European States and a failure to incorporate her on an equal basis created a fear that she might turn eastward instead, looking for other partners.

¹⁴⁷ Monnet (1978) pp. 304-5. "Nothing is possible without men: nothing is lasting without institutions."

In his book "The European Rescue of the Nation State", Alan S. Milward challenges this view that national political leaders, as well as others involved in the European integration process, should have seen the nation-state as an obstacle to peace and prosperity. What he argued was that "[T]he development of the European Community, the process of European integration, was [...] a part of that post-war rescue of the European nation-state, because the new political consensus on which the rescue was built required the process of integration, the surrender of limited areas of national sovereignty to the supranation".¹⁴⁸ This is a view completely opposite to what was argued by the neofunctionalists in the 1950s and 1960s. Milward, however, tried to play down the importance of particular people, the people one has generally tended to refer to as the "founding fathers" of the European Communities; Jean Monnet, Robert Schuman and Konrad Adenauer, in particular. Their main motive, he argued, was exactly the "rescue of the nation-state" where it was thought that "without the European Community, the nation-state could not have offered to its citizens the same measure of security and prosperity which it has provided and which has justified its survival".¹⁴⁹ Setting up the European Communities was therefore no more than an act of preserving the nation-state's status quo. As for France, Milward argued that "integration was an attempt to restore France as a major national force by creating an integrated area in western Europe which France would dominate politically and economically".¹⁵⁰ We have seen that the motives behind the rescue of the nation-state were of economic character, and as Milward has put it "the Europeanization of its rescue had also to be economic".¹⁵¹ If European integration also could solve the problem of the future of Germany, so much the better.

As an interesting theory, and a valuable contribution to the study of European integration, the above mentioned book by Milward has been included in this thesis.

¹⁴⁸ Milward (1992) p. 4.

¹⁴⁹ Milward (1992) p. 3.

¹⁵⁰ Milward (1992) p. 17.

¹⁵¹ Milward (1992) p. 44.

However, the thesis will rather try to show how political factors and personal resources played a greater part in the setting-up of the European Communities than economic factors.

With the High Authority installed in Luxembourg on 10 August 1952, the first "civil servants" of the European Community appeared. The High Authority's administration was, however, initially considered as secondary to the opening of the common market of coal and steel. As Luxembourg was only considered as a temporary location, and the personnel employed on short-term contracts, the development of its administration was rather piecemeal and often confusing. Its development happened only according to the work and the problems to be met, and not according to any plan or strict rule in the early years. As we will see below, the development of the administration happened much according to the personality of the High Authority's president of this specific time. The first president, Jean Monnet, was, as one of the founding fathers of the ECSC, not very occupied with administrative structures. His main concern was with getting the work done and thereby letting the administration develop according to needs. This changed, however, from 1955 onwards, with his successor René Mayer. By this time the work of the High Authority had expanded and a need for a more clearly defined administration followed as stricter rules for working procedures became apparent.

As has already been mentioned above, the establishment of the High Authority meant something completely new in European organisations. No one knew at the time of establishment quite how it was going to look. Jean Monnet was one of the most influential personalities in the early years. It was Monnet who launched the idea of sectorial economic integration. He had discovered since the First World War the means to develop international cooperation. This, he felt, could not be done by a system of traditional diplomacy of negotiations and compromises in rival national interests. The way to secure cooperation between different nations was to create action in common interests in the view of a global solution. This is where the idea of a pooling of the coal and steel industries of France and Germany came from, which would be joined by other interested Western European countries, and

administered by a power independent of the member States. Monnet's role as initiator, however, was not the only reason for his great influence over the new organisation's development. His decisive impact on the building-up of the new administration was also to some extent provided for by the Treaty itself. Article 16 of the ECSC Treaty stated that "*le Président de la Haute Autorité est chargé de l'administration des services*".¹⁵² Monnet saw this as a rigid power which could not be delegated to others.¹⁵³

Monnet was deeply convinced of the importance of institutions for the establishment of stable and close relationships between nations. Institutions were of such an importance, he said, as they are the only means of securing the endurance of political innovations. They would also make it possible to collect the experiences and the wisdom of one generation and pass it on to the next, providing that the functioning of a political system can be steadily improved. At the time of the setting-up of the High Authority it was thought much more important to set up immediately and efficiently the institutions provided for by the Treaty. By defining the institutional framework, administrative structures could be developed at a later stage.

One distinction made by Monnet was between the political role to be played by the institution and the preparatory and supporting role to be played by the administration attached to this institution. The carrying out of the institutional duties of the High Authority needed a "general competence" of its members. The administrative staff preparing the High Authority's decisions were the one's needing "technical qualifications" of an efficient administration that would ensure the fulfillment of the political tasks of the institution. In Monnet's view, such ambitions needed a small, efficient administration working in close cooperation with the

¹⁵² Article 16 ECSC: "The President of the High Authority shall be responsible for the administration of its services, and shall ensure the execution of the acts of the High Authority."

¹⁵³ Roger Morgan, *Jean Monnet and the ECSC Administration: Challenges, Functions and the Inheritance of Ideas*. In: *Yearbook of European Administrative History* 1992, p. 1.

members of the High Authority. The best method, he thought, was to concentrate on the task to be carried out, and afterwards, to determine, in the light of experiences, the form of organisation needed; an "*administration de mission*". Although he did wish to see the installation of numerous permanent European officials in Luxembourg, he also wanted to set a limit on the number; "*l'autorité s'exerçait mieux avec des instruments légers*".¹⁵⁴ He preferred informal meetings and ad hoc committees to restrictions imposed by a rigid organisation, something which could make him seem authoritarian to his colleagues.¹⁵⁵ From former experiences however, in the League of Nations and his work with the modernisation of France in 1946, Monnet had learned that the tendency to create an administration covering all the functions of its national counterparts often entailed an inflation of staff, and, more importantly, endangered the "free circulation of ideas". Based on this, Monnet was strongly in favour of a smaller, and less bureaucratic administration for the High Authority "whose internal organization should correspond as closely as possible to the immediate tasks of the new institution", and that would not be a "copy" of national administrations.¹⁵⁶ In keeping the administration as small as possible, however, it was necessary to define clearly the tasks and the spheres of responsibility of each administrative unit.

In Monnet's opening speech at the formal establishment of the High Authority, on 10 August 1952, he stressed the fact that the transfer of national sovereignty to the ECSC institutions was the factor which made them totally different from any other international institution. He also gave considerable importance to the independence of the new administration from the member States. This was one reason why he did not want to copy national administrations, and why the new administration had to be kept to a minimum size. He gave more importance to developing a "European spirit"¹⁵⁷ among the members of the High Authority and

¹⁵⁴ Yearbook of European Administrative History 1992, p. 4.

¹⁵⁵ Spierenburg and Poidevin (1994) p. 56.

¹⁵⁶ Yearbook of European Administrative History 1992, p. 4.

¹⁵⁷ Yearbook of European Administrative History 1992, p. 5.

its administrative staff. Also, working methods suitable for a supranational administration had to be developed before anything else. The main concern, therefore, at the time of the establishment of the High Authority, was in creating "new" administrative structures. New in the sense that there had never before been set up an executive body which was also to have extensive political powers and powers of sanction towards its member States.

In the final draft of the Schuman Declaration, written by Monnet and his team on 27 April 1950, the future institutions of the new community were described. About the High Authority it was written that, as it was to be "charged with the functioning of the whole regime it will be composed of independent persons, equal to governments: one president chosen in common agreement by the governments".¹⁵⁸ It was a revolutionary decision, and in the words of Paul Reuter, one of the authors behind the Schuman Declaration, "there is no precedent for the establishment of the ECSC, and the High Authority. Not among other international agreements, nor among agreements over base products had similar spirits been invoked. [...] The ECSC means a real transfer of sovereignty that none of the States concerned has ever before agreed to".¹⁵⁹ The "political invention" of the High Authority was in fact that it prefigured, although in a limited economic domain, what could have been a European government of a federal character. For these reasons it was necessary quickly to establish the institutional and administrative structures, and to concentrate later on policies.

It was clear that both France and Germany wanted an independent and strong High Authority. The Benelux countries, on the other hand, were slightly more reserved during the negotiations. They were afraid of being dominated by France and Germany which were the two biggest coal and steel producers, and they were reluctant to let the High Authority exercise supranational powers over their national

¹⁵⁸ Pierre Gerbet, *La Haute Autorité de la Communauté Européenne du Charbon et de l'Acier*. In: Yearbook of European Administrative History 1992, p. 14.

¹⁵⁹ Yearbook of European Administrative History 1992, p. 14.

governments. What had to be solved was the problem of political control. The Dutch delegate insisted that the High Authority should be responsible to a Council of national ministers which would give directives to the High Authority. Monnet and the chief German delegate, Walter Hallstein, however, insisted strongly on not falling into a system of intergovernmentalism, thereby reducing the High Authority to a mere international secretariat. In the end the French and the Germans had to give in and agreed to the establishment of a Council of Ministers, although with less power than what the Benelux countries had initially wanted.

To further stress the principle of supranationalism, the French and the Germans proposed the High Authority as a collegium of five members, demonstrating that they were not representatives of the States. The Benelux countries, again afraid of Franco-German domination, insisted on one member from each State. The composition of the High Authority resulted, in the end, in nine members, nominated for six years, with no more than two members from the same State. According to Article 9 of the Treaty, the independent members were to be "chosen because of their general competence".¹⁶⁰ As the High Authority was to have responsibilities of a political character, it meant that competencies only in the field of coal and steel would not be enough. What came to be some of the main characteristics for the governments in choosing candidates were personality, European "engagement" and a necessary authority in negotiating with governments in complete independence, rather than a particular competence of technical character. Being holders of such general competencies it was a fact that the nine members were not always qualified for the many technical aspects needing to be dealt with by the High Authority. This was however solved by setting up small competent teams around the members of the High Authority "who were enthusiastic and willing to give a great deal of their time".¹⁶¹

¹⁶⁰ Article 9 ECSC, 1st paragraph: *"La Haute Autorité est composée de neuf membres nommés pour six ans et choisis en raison de leur compétence générale."*

¹⁶¹ Apart from wanting a small administration for the High Authority, it was also a fact that Jean Monnet demanded a great deal of his colleagues and something which soon was to be a problem was the lack of rules concerning working hours. The days could therefore often be very long, weekends included. Spierenburg and

The first years of the High Authority's functioning was characterised by a homogeneity of the collegium as well as of the personality of its president. Its work functioned as a small team of close collaborators, launching ideas and giving each other impulses. It was President Monnet's ambition to avoid a heavy administration. Therefore, the High Authority's administrative structures developed progressively with its Services created out of need. It was important to Monnet not to separate decision-making from the execution. The best way to avoid this, in his opinion, was to start off with men who had already participated in the Treaty negotiations, helped only by a number of national experts.

The High Authority itself was organised as a collegium, taking decisions by a simple majority and thereby making all decisions a collective responsibility. The idea of the High Authority was important to Monnet to avoid the members each taking charge of their own sector of activity. He was afraid this would lead to a separation of competence, and thereby power, and easily the establishment of heavy administrative structures around each sector of activity, slowing down the decision-making procedures. In Monnet's view, two solutions presented themselves as possible working methods for the High Authority. On the one hand, "[T]he President could be responsible for managing the administration, as regards both executive tasks and preparatory tasks which the administration might have to assume".¹⁶² As the President could delegate powers, the High Authority would act as a joint body, both in discussions as well as in decision-making, but not where administrative responsibilities were concerned. On the other hand, each member could be "responsible, as delegated by the President, for a division or a department". In this case the High Authority would operate as a Council of Ministers, "whilst the President [...] would be responsible for the overall view and ensuring that all the work followed the policy guidelines laid down by the High Authority".¹⁶³ The first solution was preferred by Monnet and, after weeks of debating, working parties

Poidevin (1994) p. 57.

¹⁶² Spierenburg and Poidevin (1994) p. 70.

¹⁶³ Spierenburg and Poidevin (1994) p. 70.

began to take shape in October 1952.

The working parties which were set up each consisted of three to four members from the High Authority plus a competent director. Each member took part in two to three working parties, thereby staying "*en courant*" at meetings of the High Authority and integrated in all decisions. This way it was felt that work was being rationalised and the principle of collegiality respected. As put by President Monnet before the Assembly in June 1953: "*les membres restent compétents en tout, spécialistes en rien*".¹⁶⁴ The president himself did not take part in any of the working parties but functioned as a coordinator of the activities. It was decided, after heavy discussions among the members of the High Authority, that the President should delegate executive powers to the chairmen of the working parties while he remained responsible for the implementation.¹⁶⁵ The working parties were six in number and established in December 1953 for a trial period until August 1954. They represented market; investment and finance; production; labour; external relations; long-term policies; and administration.¹⁶⁶

4.2 From Monnet to Mayer: Administrative developments

In the early years of the High Authority, Monnet achieved his goal of creating a real team spirit among its members. However, as mentioned above, these were still early days when the High Authority was a complete novelty and its working procedures not yet completely established. In 1954, with the defeat of the European

¹⁶⁴ Yearbook of European Administrative History 1992, p. 23.

¹⁶⁵ Spierenburg and Poidevin (1994) p. 73.

¹⁶⁶ Spierenburg and Poidevin (1994) pp. 73-74. In the "Report on the Situation of the Community" of January 1953 a preliminary list of Divisions and Services were published which included Production Division; Market Division; Investment Division; Finance Division; Transport Division; Economic Division; Division on Labour Problems; Division charged with assuring the maintenance of competitive conditions; Juridical Service; Statistical Service; Internal Service; Interpreting and Translating Service; Press Service; and the Secretariat of the High Authority. European Coal and Steel Community. The High Authority, *Report on the Situation of the Community*, Luxembourg, 10 January 1953.

Defence Community (EDC) and the European Political Community (EPC),¹⁶⁷ a change occurred creating a less than favourable climate for supranationalism, meaning that more stress had to be put on persuasion and negotiation of ideas. This was one of the reasons why Jean Monnet left his job as President of the High Authority in 1955 to set up the Action Committee for the United States of Europe, carrying on his work for supranationalism. His successor as President was the Frenchman René Mayer,¹⁶⁸ appointed as President of the High Authority on 1 June 1955. He was seen as being particularly qualified, being both a statesman as well as a great administrator. He fitted in well, being both technical and political, and it was to him the High Authority would later owe its *Statute of Personnel*, or Staff Regulations as they will be called in English.

René Mayer was of a completely different nature to Monnet, and more humble in his relations with the other members as well as towards the member governments, something which he indicated in his book:

*"Mes collègues et moi, les hommes de la Haute Autorité avons de grands pouvoirs. Mais nous ne devons pas les utiliser tout le temps, chaque jour, à chaque occasion. Nous devons savoir quand les utiliser et l'expliquer aux intéressés. Il est préférable d'arriver à un consensus que de donner des ordres."*¹⁶⁹

In line with his views thereby expressed, continuous consultations developed between the governments, the industries and the trade unions.

¹⁶⁷ See Chapter III, 5. The Influence of the Spaak Committee on the establishment of the European Commission.

¹⁶⁸ René Mayer sat as a member of several governments between 1947 and 1953, as Minister for Finance, Minister for Justice, Minister for Finance and Economic Affairs, among others. From 1953 he became member of the National Assembly, representing the Radical Party. Together with René Pleven he was also the only member of the French Government that had been informed by Robert Schuman about the scheme of pooling the coal and steel industries, before 9 May 1950. Spierenburg and Poidevin (1994) p. 242.

¹⁶⁹ René Mayer (1956) *Pour une politique européenne*. In: Yearbook of European Administrative History 1992, p. 25. "My colleagues and I in the High Authority have great powers. But we should not use them all the time, every day, on every occasion. We ought to know when to use them and explain this to interested parties. It is preferable to arrive at a consensus than to give orders." Own translation.

In his relationship with the Assembly Jean Monnet always seemed to show a certain degree of suspiciousness. René Mayer, on the other hand, came from the French Assemblée Nationale and, in seeing its importance more clearly, seemed to be on much better terms with the Common Assembly of the ECSC. After he was nominated as President he presented his programme to this Assembly. Such a gesture was much appreciated by the parliamentarians who, having the right to overthrow the High Authority, also wanted to participate in its development, and Mayer thus created a precedent for later Presidents of the High Authority, as well as later European executives. He frequently gave accounts of the activities of the High Authority to the Common Assembly which proved good for the functioning of the Community as a whole.

Mayer's relationship with the Council was to a certain extent less easy. He was a great defender of supranationalism and, in that sense, held the view that a common market could not function properly without its rules being drawn up independently of States. Nevertheless, as a result of his more frequent consultations with national authorities and the Council, the balance of the ECSC institutions was progressively tilted in favour of the Council during Mayer's presidency. Looking back, it was stated by Robert Marjolin in 1958 that the High Authority had played its role as the central body given to it by the Treaty, that it had been the motive factor among the Community institutions. It had frequently played the mediator role between the governments and thereby made agreements easier. He continued by saying that as frequent consultations had been established between the High Authority and representatives of national authorities in areas exclusively given to the High Authority by the Treaty, this had only showed how extremely difficult it would be to oppose several States, or even only one, when vital interests of the State were at stake.¹⁷⁰

As mentioned above, it was under the presidency of René Mayer that Staff Regulations were established. Monnet had not been a particularly administrative

¹⁷⁰ Pierre Gerbet, *La Haute Autorité de la CECA*. In: Yearbook of European Administrative History 1992, p. 26.

person, and had instead delegated to the Belgian member Paul Finet the preparation and execution of administrative matters. Although an administrative working group had been set up in 1953 it had not received very much attention from the President. Its job was to assist the President in the administration of personnel, as well as to give advice on nominations and administrative rules. It ended up, however, taking decisions in a majority of the cases on its own with powers delegated from the President. From the earliest days, a "Statutory Committee" was set up to prepare a draft of Staff Regulations, which it started in 1953. Although this was principally against the wishes of Jean Monnet, there was a wish to create an administrative situation closer to national administrations rather than to that of international organisations. This was primarily because it was thought that "a body of supranational civil servants was in reality almost a body of national civil servants, where the nationality was supranational".¹⁷¹

During the presidency of Monnet the interest in formulating Staff Regulations was minimal. He had been "in no hurry to see the general organizational regulations, provided under Article 16 of the Treaty, adopted".¹⁷² According to Article 16 "The High Authority shall make all appropriate administrative arrangements for the operation of its departments. It may set up study committees, including an economic study committee." These regulations were adopted on 5 November 1954.¹⁷³ To Monnet the factor of competence always came first. From 1953 onwards, however, his interest in administrative matters grew to some extent. He was at this time more and more turned towards the EDC and EPC, and his interest in the Staff Regulations was for a future functioning of a public federal Europe. Nevertheless, by the end of

¹⁷¹ Declared by Jacques Reuff who was at the time a Judge at the European Court of Justice. Yves Conrad, *La Communauté Européenne du Charbon et de l'Acier et la situation de ses agents. Du régime contractuel au régime statutaire (1952-58)*. In: Yearbook of European Administrative History 1992, p. 64. Own translation. "*un corps de fonctionnaires supranationaux était, en réalité, presque un corps de fonctionnaires nationaux, pour lesquels la nationalité était la supranationalité*".

¹⁷² Spierenburg and Poidevin (1994) p. 75.

¹⁷³ Official Journal 24 November 1954. pp. 513-17. In: Spierenburg and Poidevin (1994) p. 75.

1954 and the beginning of 1955 there was a growing discontent among the administrative personnel caused by the lack of regulations. Concern was expressed about the lack of rules governing the selection of officials for certain posts, poorly defined tasks and responsibilities, as well as the lack of criteria concerning the fixing of salaries.¹⁷⁴ The nomination of René Mayer as President was to set a fundamental mark on the final preparation of the Staff Regulations. They were adopted on 28 January 1956, with a "*Règlement Général du Personnel*" to be adopted soon after, and finally coming into force on 1 July 1956. As René Mayer was more administratively oriented than Monnet had been, he felt the need for providing the personnel of the institutions with fixed Regulations. Monnet, one might say, was more interested in the institutions as such, to see them in operation, achieving their goals. Mayer, on the other hand, found it quite important to secure and safeguard the personnel of the institutions, something he saw as essential to achieving the same goals as set out by Monnet.

With President Mayer came also the establishment of formal recruitment procedures. In the very early days it was agreed among the members that the administrative structures of the High Authority should be determined by the functions which the organisation performed. As the ECSC was characterised by a rather experimental nature in 1952/53, this was an element that cautioned against any heavy impositions of rigid administrative structures. No formal recruitment was established at that time, because it was realized that both the type of administrative personnel and organisation required would change over time as the functions of the High Authority evolved. This view is clearly to be found with Pierre Uri, writing in 1952 that " given the novelty of the tasks to be fulfilled by the High Authority, it would be a mistake to try to set it up and apply to it an organisational outline a priori".¹⁷⁵

¹⁷⁴ Spierenburg and Poidevin (1994) p. 78.

¹⁷⁵ Pierre Uri - Aide-Mémoire sur la conversation avec M. Etzel, 16 juillet 1952. Sonia Mazey, *Conception and Evolution of the High Authority's Administrative Services (1952-56): from Supranational Principles to Multinational Practices*. In: Yearbook of European Administrative History 1992, p. 32. Own translation. "*Etant donné la nouveauté des tâches que devra remplir la Haute Autorité, ce serait une erreur de dresser et de vouloir appliquer un schéma*

President Monnet himself also said, in a speech to the Assembly on 8 November 1952, that "[W]e have wanted to set up an organisation that adapts to the work we have to do, and to the problems we have to solve. We do not want an abstract organisation."¹⁷⁶

During Monnet's presidency, what was expected of the members of the High Authority was to possess considerable linguistic abilities, a "European spirit", along with "sufficient general and cultural skills to be able to negotiate at the highest level". He also believed that a horizontal administration organised along functional lines would facilitate the communication between members of the High Authority, officials, national experts and civil servants. In the High Authority there was a wish to recruit highly qualified people with an experience from similar work. As no recruitment procedures were established at the beginning, each High Authority member put forward a list of qualified people from his own country. As procedures became somewhat more established, nominations were left to the directors.¹⁷⁷

Recruitment of personnel did to a large extent evolve alongside the development of the High Authority. During Monnet's early days as President, the Services were organised horizontally, along functional lines and, in keeping with the desire to retain flexible administrative structures, officials were recruited on an informal basis as well as employed on short-term contracts. Nevertheless, as the High Authority's responsibilities expanded, the limitations of the initial administrative arrangements became apparent. During 1954-55, therefore, the High Authority underwent an administrative reorganisation leading to a more effective and more traditionally structured bureaucracy. In its first year the relations between the High Authority and the administrative services were fairly informal, with senior officials often present at meetings of the High Authority. This, however, was an element that disappeared with a growing bureaucratisation.

d'organisation a priori."

¹⁷⁶ Yearbook of European Administrative History 1992, p. 32.

¹⁷⁷ Yearbook of European Administrative History 1992, p. 33.

The informal recruitment procedures of the early years became an important source of internal division within the administration. These internal divisions followed particularly along national lines. It was an element which also existed within the collegium of the High Authority and was quickly reproduced at the administrative level. Although Monnet had wished to avoid allocating posts to particular member States, and rather to employ the best qualified candidate, there was a growing concern among the members of the High Authority about the number of administrative posts held by each member State. Implementing a national quota-system was the only solution to this problem.

4.3 Influences from the League of Nations

The first President of the High Authority, Jean Monnet, is not only known as being the initiator of the Schuman Declaration. He also had experience from earlier international secretariats of a "similar" kind. He had been a Deputy to the Secretary-General of the League of Nations, 1919-1923, and from his extensive travels throughout his life he had been able to study other federal systems. During his work as Planning Commissioner for the modernisation of France in 1946 he was largely inspired by the United States' federal system, in particular the technical expertise available to the US government.

The League of Nations was set up in 1919 as a free association of States undertaking to pursue certain common aims. With its permanent Secretariat and its own budget it was seen to be a more strongly constituted body than most confederations known to that date. Its Covenant was a compromise between two conceptions in general: the old conception of the absolute sovereignty of States and that of the newer and bolder conception towards which the world was moving - that States must accept some limitations to their sovereignty. To join, however, the States did not have to renounce neither their national sovereignty nor their right to veto, and allusions to the maintenance of the principle of sovereignty of States was frequent in the Covenant of the League of Nations.

At the time of the League of Nations it was not commonly recognised that a pooling of sovereignty could be a way of solving international problems. It was "thought that it was bound to prevail, by sheer moral strength, by the appeal to public opinion, and by the force of habit".¹⁷⁸ In the seeking of peace the League was concerned with the revival of old historical demarcation-lines, or the drawing of new ones, and the need to safeguard them against any change. This was quite different from movements started in the 1940s and 1950s, gradually trying to abolish national frontiers, aiming for the same goal of peace.

The way the League of Nations was institutionally organised was to resemble in many ways that of the later ECSC and EEC. It had a Council, an Assembly and a Secretariat. The latter stood roughly in the same relation towards the Council and the Assembly as ministerial departments stand towards their national governments. Before the birth of the League of Nations there did not exist a general and common administrative body like the League Secretariat. The importance of securing the independence and impartiality of what was to become the permanent civil service of the League was realized at the time, and the Secretariat was thought to be this truly independent body. However, it was still not entirely independent of the governments represented. There was no provision in the Covenant concerning the nationality and status of the members of the Secretariat. According to a statement embodied in a report submitted to, and adopted by the Council in May 1920 by Mr. A. J. Balfour,¹⁷⁹ "the duty of selecting the staff falls upon the Council. [...] Evidently no one nation or group of nations ought to have a monopoly in providing the material for its international institution. [...] the members of the Secretariat once appointed are no longer the servants of the country of which they are citizens, but become for the time being the servants only of the League of Nations. Their duties

¹⁷⁸ Monnet (1978) p. 81.

¹⁷⁹ Mr. A. J. Balfour was the British Foreign Secretary between 1916 and 1919, as well as Prime Minister from 1902 until 1905, representing the Conservative Party.

are not national but international."¹⁸⁰ It was thus clear that in its intentions it was to be an international civil service, independent of the governments of its various members. In its way it showed signs of being the forerunner of the later High Authority. Although not intended to be supranational, an international civil service was something quite new at the time.

In his *Memoirs* Jean Monnet described how he later came to realize the way in which the League Secretariat prefigured supranationalism. This, he said, was "through underlying agreement among men who enjoyed widespread influence in their own countries, so that awareness of the general interest was communicated to the places where national decisions were reached".¹⁸¹ Nevertheless, the evolution of the League Secretariat also shows similarities with the High Authority and the problems this was later to face. The latter was meant to be supranational and completely independent of national authorities. It showed, however, that these intentions were rather too ambitious as no nation was prepared to renounce any sovereignty over its vital interests. The League Secretariat was a body intended as assistance to the Council, which again was dependent on the will and agreement of the Great Powers. As Monnet expressed: "No one really tried to solve the actual problems: their main concern was to find answers that would respect the interests of all those around the table. [...] the whole organization fell into the routine of mere co-operation".¹⁸² The same problem was later going to face both the High Authority as well as the European Commission.

The League Secretariat, as opposed to the High Authority, was to be international, open to nationals of all members of the League as well as to nationals of non-member States. Officials of the League Secretariat were also bound by a double loyalty, almost unavoidable. They were appointed on a short-term basis, seconded from the national services and depended on the good will of their national

¹⁸⁰ Rappard (1930) *Uniting Europe. The trend of international cooperation since the war*, pp. 214-215.

¹⁸¹ Monnet (1978) p. 85.

¹⁸² Monnet (1978) p. 96.

governments. The delegates came to claim the presence of a certain proportion of their nationals in the Secretariat as one of the prerogatives of membership, similar to what happened in the High Authority.

The League of Nations was to make great attempts to realize its aim of achieving world peace. Nevertheless, it was faced with an obstacle still present to this day. It brought governments together, trying to get national officials to cooperate. However, as soon as national interests conflicted, the method broke down. Monnet wrote in a Memorandum in 1919: "It is [...] important to make both Governments and peoples know each other better, so that they come to see problems that face them, not from the point of view of their own interests, but in the light of the general interest."¹⁸³ Thus can be traced the ambitions and the limits of the method that gradually led to the idea of the European Community. The League of Nations can be said to have prefigured supranationality in its underlying agreement among men enjoying widespread influence in their own countries, bringing awareness of the general interest to the places where national decisions were reached. What the League of Nations lacked though was an independent political body that could take a common view of the problems and arrive at a common decision. However, the shortcomings of the League of Nations were, especially through Jean Monnet, taken into account when establishing the High Authority. One element essential to success was that of equality among nations. The League system was built on discrimination against Germany and greatly in favour of the Great Powers and their right to veto. The League of Nations also ended in failure, and the outbreak of the Second World War.

It was during the time of the League of Nations, which was considered as the first great experiment in international administration,¹⁸⁴ that the term "International Secretariat" became part of the vocabulary. By international administration was

¹⁸³ Monnet (1978) p. 83.

¹⁸⁴ Ranshofen-Wertheimer (1945) *The International Secretariat. A Great Experiment in International Administration*, p. 3. Mr Ranshofen-Wertheimer was a British official at the Secretariat of the League of Nations 1930-40.

traditionally meant "'public administration' in a wider sense". "management applied to the affairs of the state", and even "a permanent process, based on division of labour, and hierarchically organized, by means of which official business is carried out".¹⁸⁵ However, with the setting-up of the League of Nations, it was felt that a redefining of the term would be appropriate. As Egon Ranshofen-Wertheimer pointed out "If it is granted that the work performed by the League Secretariat and the International Labour Office is international administration and that its staff members are international administrators, it is nevertheless true that the League was not essentially an "operating" agency in the accepted meaning, but resembled in some cardinal respects ministerial and other governmental departments which resort to ad hoc agencies or local authorities for the execution of some or all of their policies".¹⁸⁶ According to Jean Siotis' explanation, which was related to the later European Commission, the term refers to "international bodies which have a distinct existence within a given system of multilateral diplomacy and which exercise administrative and/or executive functions, implicitly recognised or explicitly entrusted to them by member States".¹⁸⁷ The Secretariat of the League of Nations was the first to be qualified under this description. In a comparison between national administrations and international Secretariats Egon Ranshofen-Wertheimer pointed out the fact that the first is a part of the executive branch of government, under permanent control of the legislative branch of government. As for the League Secretariat, however, it would be the only permanent element in an international organisation.¹⁸⁸ Before the experience with the European Communities there was also the fact that international administrations were not operational and did not have their own international executive agencies. International administrations of the time of the League of Nations and before were consultative, recommendatory, and advisory bodies, with the execution of decisions delegated to national or local agencies already functioning. As one way of looking at the differences between the

¹⁸⁵ Ranshofen-Wertheimer (1945) p. 3.

¹⁸⁶ Ranshofen-Wertheimer (1945) p. 4.

¹⁸⁷ Siotis (1964) p. 226.

¹⁸⁸ Ranshofen-Wertheimer (1945) p. 9.

executive powers of the High Authority and the European Commission, one could point out the former which had direct powers of execution in the area of coal and steel, and the later European Commission, where a large part of the execution was left to the various administrations of the member States.¹⁸⁹

Jean Monnet, with his experience in the League Secretariat, was eager to make the High Authority of the ECSC into an improved version of it. With his experience he wished to maintain the concept of the League Secretariat and the way it functioned before it eroded and became nothing but a battleground between nations. He learned however that still, in the 1950s, nations were not ready to give up much of their sovereignty. He wanted the High Authority to be supranational in the true meaning of the word. Its administration was to develop according to needs, without being copied from any of the national administrations, and without national quotas determining its members and staff. He was very reluctant to give in and instead left the High Authority to put his energies elsewhere where he could influence more strongly.¹⁹⁰ His successor as President of the High Authority, René Mayer, was more of an administrative type and with him came the Staff Regulations which were in great demand as the organisation became bigger and more bureaucratic. Both under the presidency of Jean Monnet and of René Mayer, however, the High Authority was constituted of a team of European outlook. Through their work they managed to accustom the member States as well as the public to the idea of a European authority with which national administrations, enterprises and trade unions had to collaborate. Lastly, and most importantly though, its experiences altered the notion of an independent European collegiate body.

¹⁸⁹ See Chapter III, 4. Functions and Features of the European Commission, for a more extensive discussion on international Secretariats.

¹⁹⁰ In 1955 Jean Monnet established the "Action Committee for the United States of Europe" which had the support of all the major unions of the Six, as well as personalities like Guy Mollet, Robert Marjolin, Pierre Uri, Guido Carli and Richard Mayne. The Committee held its first meeting on 18 January 1956 in Paris.

5. CONCLUSION

Why did the establishment of the High Authority of the ECSC come when it did, and what were the factors making it possible? As we have shown it was not as much due to one person or one event, as to a combination of different factors. Germany, we have seen, was not in position at the time to refuse to take part in the European integration process. She was in a vulnerable position with too much at stake for the future. The ECSC was further a way of regaining her credibility as a world partner as early as five years after the end of the Second World War.

France was in a different but still difficult situation. The war had been a traumatic experience on the domestic scene and financially she was in a ruin. It was important for her to find a new role in post-war Europe. In order for her financial recovery it was further necessary with a peaceful cooperation with Germany. Jean Monnet had the idea of using the coal and steel industries as the way to integration. These were important industries at the time, used in war making, as well as involving the highly controversial Saar problem.

The institutional structures of the High Authority were determined already at the Schuman Plan conference of July 1950. It was thanks to the Benelux fear of a Franco-German domination, and against the wishes of Jean Monnet, that the idea of a Council of Ministers was adopted. Monnet had originally wanted the High Authority to be responsible to the Common Assembly only. All that was certain about the High Authority was that it should be independent and supranational, working as a kind of European "government". Its more administrative structures, we have seen, came to depend to a large extent upon the personality of its president. Nevertheless, we must not forget that when Jean Monnet wanted a small administration working from case to case, involving all levels, this was more possible during its first few years as the workload was smaller. Towards the end of Monnet's presidency we have seen how the administration necessarily grew, demanding more rigid, and perhaps bureaucratic, structures. The system adopted in the High Authority was piecemeal in the sense that Monnet and the other members

of the High Authority would deal with the problems as they came along, adopting the administration accordingly. Under the presidency of Walter Hallstein we will later see how the European Commission started working from the other end, beginning with building up a strong administration, to be prepared for new tasks that might arise.

CHAPTER III

TOWARDS THE ESTABLISHMENT OF THE EEC

*"We are not integrating economies, we are integrating policies. We are not just sharing our furniture, we are jointly building a new and bigger house."*¹⁹¹

1. INTRODUCTION

When the Treaty of Rome came into force on 1 January 1958 and the Commission of the European Economic Community (EEC) was set up, eight years had already passed since the Schuman Declaration leading to the establishment of the ECSC two years later, and four years since the EDC and the EPC had been defeated. At this time the hope for a common market, comparable in size to the US, was very attractive to many as a means for greater wealth and a basis for a political union.

In a speech before the European Parliamentary Assembly on 12 October 1960, Walter Hallstein expressed what he saw as the objective of the European Commission, namely "the political unification of our continent".¹⁹² To achieve this, economic integration had to be made irreversible. This would only be possible if the integrity of the Community as an economic union were to be preserved, the provisions of the Treaty fully implemented, if not speeded up, and the independent role of the Commission expanded or at least protected.

This chapter will begin with a discussion of the theory of neofunctionalism and how it was affected by the establishment of the European Communities.

¹⁹¹ Hallstein (1962) p. 66.

¹⁹² EEC Commission Bulletin, No. 8-9 1969, p. 15. See also Lindberg (1963) p. 69.

Neofunctionalism was, in Paul Taylor's words, a reformulation of "the older Functionalist ideas, and applied [...] particularly to regional integration".¹⁹³ With the establishment of the ECSC in 1952 and the Communities stemming from the Treaties of Rome in 1958, scholars found a need to develop a theoretical explanation. As this was a totally new concept of international cooperation, new sets of explanations seemed to be required.

In the previous chapter we discussed the setting-up of the High Authority of the ECSC and how it came to look and function administratively. This chapter will take the development further towards the creation of the European Commission, through the co-called "*relance européenne*" and the Messina Conference of 1955. After the EDC had failed to go through the French Assemblée Nationale all hope for further European integration seemed lost. The process that had been started with the Schuman Declaration was, nevertheless, to prove too strong and powerful to stop there. The Messina Conference took place less than a year later, preparing the grounds for the Treaties of Rome. The idea of a European Commission was first introduced in the Spaak Report, produced by the Intergovernmental Committee set up in Messina.

Towards the end of this chapter a few aspects of the European Commission will be discussed, such as its formal powers and the concept of "cabinets" which was adopted into this system. The Kennedy Round of GATT in particular, as well as the Luxembourg - Lorraine case briefly, will be studied for the purpose of finding out to what extent the Commission could, and did, speak with one voice, as a supranational body.

¹⁹³ Taylor (1971) p. 6.

2. TOWARDS THE ESTABLISHMENT OF THE EEC

2.1 Neofunctionalist theory of integration

The decade starting with the Schuman Declaration in 1950 became in Europe very much dominated by the neofunctionalist thinkers and their theories about integration. One of the most prominent thinkers was the American scholar Ernst B. Haas. The term integration is used to describe a large range of different inter-relationships between states or within states. In a narrow and ambitious sense integration is used to describe a tendency towards the fusion of governmental structures, or the establishment of a new political authority which inhabits the area of two or more previously separate states. In Haas' view "integration in the EEC would progress not by the efforts of individual politicians, but through governments, 'adaptive interest groups, bureaucracies, technocrats, and other units with modest but pragmatic interest' and furthermore by incremental steps". He believed, further, that "'rational' welfare-oriented administrators" like the Commission were to be "responsible for leading the new technocratic Europe towards its supranational goal". He further stressed the need for the setting-up of central bureaucratic institutions whose task would be to channel conflicting demands into "merging ideological patterns", which would mean, in fact, "to guide them into supranationality". As one might understand from this, the early form of neofunctionalism embodied an acceptance of supranationalism as the goal of integration. These theories went well in line with the establishment of the ECSC and the High Authority, whose aim through the Treaty was to be a supranational body.¹⁹⁴

According to another influential neofunctionalist thinker of the time, and also American, Leon N. Lindberg, the European Economic Community was characterised as a crisis system. As he put it "[T]he European Community is [...] a crisis system that seems to advance most often as a result of very tense and explosive situations".¹⁹⁵ This seems to be true at least after the defeat of the EDC and the

¹⁹⁴ Groom and Taylor (1975) *Functionalism. Theory and Practice in International Relations*, p. 39.

¹⁹⁵ Lindberg and Scheingold (1970) p. 240. In: Groom and Taylor (1975) p. 45.

EPC, and the rapid development that followed. It does not, however, explain the ECSC.

Within the neofunctionalist theory, which has also been called a process theory, it was believed that, as integration proceeded, the consensus characteristic of the domestic political system would be recreated at the Community level so as to replace power-politics. It was believed that the sovereign power of the state would be superseded by the authority of supranational institutions. In the new, emergent Europe, Haas believed that a new centre would develop with institutions possessing or demanding jurisdiction over the pre-existing ones. This view goes along with his definition of integration as "the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new and larger setting." Furthermore, "integration is conceptualised as resulting from an institutionalised pattern of interest politics played out within existing international organisations".¹⁹⁶ From a neofunctionalist point of view the emergence of a political community would lead interest groups to articulate supranational solutions to their problems and to begin to address their demands to the supranational institutions. Political integration, therefore, would come about through the interaction of political forces like interest groups, political parties, governments and international agencies, which would seek to exploit these pressures in pursuit of their own interests.

In Haas's view, integration would have the greatest success in a regional setting. As it also was believed by the neofunctionalists that the autonomy of the nation-state could be questioned already in the post-industrial "new" Europe, it was further believed that the nation-state would be in "full retreat" in the European Community. Supranationalism, it was thought, not federation, confederation, of intergovernmental organisations, seemed to be the appropriate regional counterpart to the national State which was no longer felt as capable of realizing welfare aims within its own narrow borders. Supranationalism was also what had been sought, in

¹⁹⁶ Taylor (1971) pp. 65-66.

some ways successfully, with the establishment of the High Authority from the ECSC. Neofunctionalism, one might say, is the product of functionalist ideas with experience of the ECSC. It was hoped that the ECSC would remove the States' material capacity to make war again. It was also expected that the conditions would speedily be created for the spread of such arrangements to other sectors so that the actual solidarity would evolve gradually and almost automatically into a supranational European government.

In the case of the ECSC, the kind of integration that was aimed for, and largely achieved, was a very specific and partial integration as it was only concerned with the area of coal and steel production. It was sought to achieve a very high level of integration, within a small and restricted area, very quickly. The essence of partial integration was that, although a high level of integration was obtained in some areas, the scope of integration was rather low. In the case of the ECSC, the relationship between the integrated and unintegrated sectors gave rise to a number of problems. The neofunctionalists, however, saw partial integration as a useful stepping stone to further and wider integration. This, in neofunctionalist terms, was what was referred to as the concept of "spill-over". The "spill-over" effect was the way they explained how the ECSC helped bringing out a solution in which it would be easier later to set up the EEC.

The "spill-over" effect was used as an explanation as to how integration in one area might, or even most likely would, contribute to further and deeper integration. It involved first of all functional areas such as financial and commercial activity. Through the attitudes and expectations of the actors, however, experience would make further steps easier. As put by Bulmer and Wessels: "The neofunctionalist theory of integration envisaged the gradual transfer of policy responsibilities (spill-over) to a level above the nation state, with the dynamic being provided by non-governmental political elites who would regard political activities on the European level as being in their own self-interest. These elites (political parties or interest groups) did not in fact provide the dynamic envisaged and

remained subordinate to national *governmental* elites."¹⁹⁷

The neofunctionalist theory was a further development from the older functionalist theories. These were concerned with the problems of war, and sought to use the international institutions to transfer loyalties away from national governments. It was thought that international organisations would slowly strengthen a community of co-operation which would then transcend national frontiers and lead to the decline of national governments. What the neofunctionalists later did was to reformulate the functionalist ideas and apply them particularly to regional integration which was the case of Europe. In the 1950s, the neofunctionalist theories seemed highly successful and triumphed because the theories fitted in with what was happening and therefore seemed to work.

The High Authority of the ECSC was set up as a supranational body, independent from the member governments. It was an example of what has been mentioned above as partial integration and its Treaty had quite a precise statement of rules as well as a machinery for their application. However, it was never the intention of the founders of the ECSC that unification and integration among the European countries, or at least among "the Six", should stop at that level. Negotiations for the EPC and EDC started almost immediately after the Treaty of the ECSC had been signed in 1951. However, with France's failure to ratify the EDC treaty on 30 August 1954, which also stranded the EPC, the ECSC was left as the sole survivor of the hopes of a European political unity. Nevertheless, despite the desperate situation that many felt because of this, work for further integration went on and accelerated with the "*relance européenne*", which culminated in 1957 with the signing of the Treaties establishing the EEC and Euratom. As distinct from the partial integration of the ECSC, the establishment of the EEC was an attempt to achieve gradual integration over a much larger area. The Treaty of the EEC amounted to "a general statement of goals with a set of institutions and a procedure

¹⁹⁷ Bulmer and Wessels (1987) *The European Council. Decision-making*, note 5, p. 153.

for their attainment"; a so-called "*Traité cadre*".¹⁹⁸ In other words the Treaty establishing the EEC was more of a framework treaty that set forth "the basis of economic unification, leaving much of the content vague, but establishing an institutional system with the power to define the future order of things".¹⁹⁹ The ECSC Treaty, on the other hand, was more a statement of rules with a set machinery for their application; a "*Traité loi*".

The European Commission was set up as a body of executive character. However, its powers seemed distinctively more limited than that of the High Authority of the ECSC. This was, on the other hand, an argument that was strongly disputed by Pierre Uri of the High Authority. He claimed that the European Commission in fact had more powers than the High Authority, only it did not use them all.²⁰⁰ Nevertheless, the High Authority had direct, executive responsibilities whereas the European Commission had to share this responsibility with the Council of Ministers. As most of the important decisions depended on the Council of Ministers, the supranational element was therefore lacking from the powers of the Commission. The word "supranational" does not even occur in the Treaty of Rome, as it did in the ECSC Treaty. One reason for this might be explained by the lesson that was learned from the experiences of the ECSC. It became clear that integration could not possibly proceed against the will of the governments involved. Therefore, the High Authority was not able to make use of its supranational powers to the extent that it was meant to, and came to consult the Council much more than envisaged in the Treaty. The failure of the EDC in August 1954 was probably an even more important reason, of which the first is dependent. It created a less favourable climate among the states involved for anything supranational. The powers given to the EEC institutions were, therefore, not invested in a supranational executive as in the ECSC, but given to the Community as a whole.

¹⁹⁸ Lindberg (1963) p. 27.

¹⁹⁹ Lindberg (1963) p. 27.

²⁰⁰ Interview with Pierre Uri on 9 January 1989. In the Historical Archives of the European Communities, European University Institute, Florence.

2.2 From the OEEC to the Messina Conference

It was only under pressure from the United States of America (USA) that a permanent European body was set up after the Second World War. Marshall Aid was only meant to be temporary and not to lead to a permanent organisation. To the European countries it was nevertheless felt convenient as well as adding to their security to have this organised from America. However, it was in the interest of the Americans, as well as of the Europeans in the long run, that Europe should organise the Marshall Aid on its own. As a consequence, the Treaty of the Organisation of European Economic Co-operation (OEEC) was signed on 16 April 1948 in Paris. This was experienced as a rather unexpected and also unwanted responsibility for some.

The OEEC was a heterogenous organisation of intergovernmental cooperation. It had 17 members amongst which were NATO members and neutrals, highly industrialised countries as well as less favoured ones in both economic and political terms. The organisation had no real decision-making powers of its own but was based on "[M]utual agreement of all members".²⁰¹ The most important original function of the OEEC was the preparation of the European Recovery Programme. The OEEC was made up of different quasi-executive boards and a Council with executive powers in the sense that it could take decisions that were binding on the Member Governments. However, it had no Parliamentary Assembly. The type of integration that developed between the European countries as a result of the establishment of the OEEC was one of coordination which was much looser and wider than the partial integration that developed from the ECSC. By coordination was here meant that international institutions were actively engaged in locating those areas where alignment of structures and policies were desirable. They would exert influence upon governments to obtain the necessary alignments and they did not acquire formal powers of their own.

²⁰¹ Convention for the OEEC, Article 14.

The kind of integration the OEEC offered was much too loose and non-committal for the "European visionaries" of the time, like Jean Monnet and Walter Hallstein. It was felt that Europe neither could nor should rely for ever on Marshall Aid, nor remain dependent on America. It was seen as essential that Europe should learn to stand on her own feet which required a form of collective effort in which Germany's contribution could safely be included. However, it also seemed an illusion to expect this of the OEEC with its 17 separate and sovereign member States. A European federation was what was believed to be the necessary solution.

By 1955 the OEEC, which some had believed might become the basis of a European customs union, had become a useful but traditional body for cooperation between sovereign States. At the same time the Council of Europe, which had been established as a consequence of the Congress of Europe in The Hague in 1948, was considered as virtually powerless and the plan for the establishment of the EDC and EPC had already been buried. There were also other incidents which greatly effected the Europeans at this stage. The death of Joseph Stalin in 1953 had diminished the fear of the USSR, which had helped spur the Europeans towards unity. Another death in 1954, that of the Italian statesman Alcide De Gasperi,²⁰² who was considered as Italy's greatest "European", removed one of Europe's foremost friends. Nevertheless, the Treaties of Rome were signed less than two years later by the six members of the ECSC.

²⁰² A comparison has been made between De Gasperi and Schuman, and their origins from disputed border territories, making them less committed to the nation-state as an organisational framework. De Gasperi (1881-1954) started his political career by representing the Italian minority of Alto Adige before 1914 in the Imperial Reichstag in Vienna, which was part of Austro-Hungary. De Gasperi became an Italian citizen at the age of 38, while Schuman had been 33 years old when he became a French citizen. Milward (1992) pp. 327-28 and Bond, Smith and Wallace (1996) p. 30. The effects of such a background was, nevertheless, disputed by Jean Monnet in the following statement: "If he [Robert Schuman] was able to act on 9 May 1950, it was because he had never been afraid of responsibility and had accepted so important a post only in order to build a better world." Admittedly, to Schuman one might assume that this must have been a more sympathetic characteristic. Bond, Smith and Wallace (1996) p. 24.

Although the OEEC had registered certain achievements like liberalisation of trade and the establishment of the European Payments Union (EPU),²⁰³ it had seen more success with immediate problems than with longer-term questions of investment and balanced growth. This was in many ways due to two handicaps. One was Europe's inability to deal with the USA as an equal, which was to a great extent caused by the second, which was the lack of real unity among the Europeans themselves. The OEEC was an organisation consisting of too many different and conflicting interests. It was in many ways the ECSC members against the others, in particular the United Kingdom and the Scandinavian countries. The United Kingdom preferred working through the heterogeneous organisation of the OEEC. In her view the Common Market would be an exclusive group which could lead to the formation of a discriminatory block, nullifying parts of the OEEC's multilateral work. Despite fears of "dividing Europe", "the Six" were determined to continue their work for the creation of a common market. They saw the need for a deeper and wider integration that could not be achieved by the ECSC alone. It was seen as essential to create common institutions, independent from national governments, that would be given more extensive powers over the national economies.

Through the signing of the Treaties of Rome, the member States had given up the power to act autonomously and unilaterally within a whole spectrum of specific and general cases by virtue of the authority and role granted to the institutions. Despite the many similarities between the European Commission and the High Authority, the formal decision-making powers assigned to the Commission were distinctly inferior to those set out for the High Authority. In the Treaty of Rome the superiority of the Council of Ministers over the Commission was clearly spelled out and the Commission's role was to be largely the technical one of supervision and preparation. The responsibility of the Commission was to represent the interests of the Community as a whole with its staff being the nucleus of a

²⁰³ It has to be acknowledged that the creation of the European Payments Union had reduced considerably the quota protections, and the European economy was restored to a degree and at a speed which was considered as quite remarkable at the time.

European civil service. It was to serve as a watchdog over the general functioning and development of the Common Market as well as ensuring the execution by the member States of the Treaty and of the acts of its institutions.²⁰⁴

In most international organisations negotiations involving government representatives "end in a compromise on the basis of a give and take bargain, or in a lack of compromise ensuring cooperation through inaction".²⁰⁵ To avoid this, therefore, the Treaty of Rome provided that all major decisions of the Community were to be based on proposals from the Commission, representing the interests of the Community as a whole. Also, it had a duty of trying to achieve a compromise between the divergent positions of the Member States, as well as between these and the Commission. This is also a task which was performed by the Committee of Permanent Representatives.

The Commission was established as a body of independent international "civil servants". Its members were firm advocates of maximum economic and political integration and of national powers being delegated to the Community institutions. It also sought to "change the very climate of the discussions by concentrating on the study of concrete problems rather than on discussions of the theory.[...] (and) to adapt the external policy of the Community to the new realities of the world economy, particularly to the changing commercial and financial relations between Europe and America".²⁰⁶ As the Third General Report of the Commission put it: "From the very beginning of its existence, circumstances brought the Community face to face with its international responsibilities, and the earliest difficulties met by the Common Market came from outside. The first task which had to be accomplished were to take the sting out of attacks, to grasp the initiative in creating conditions for co-operation with non-member states in a spirit of mutual confidence, in other words to practice a dynamic external policy, to establish its liberal character and to make

²⁰⁴ A thorough discussion on the functions of the European Commission will follow below in Chapter IV of the thesis.

²⁰⁵ Lindberg (1963) pp. 65-66.

²⁰⁶ Lindberg (1963) p. 165.

its content increasingly clear, and so to make the personality of the Community stand out against a world setting."²⁰⁷ The Commission was further convinced of the need for an association with the other OEEC countries; to "associate" these with the existing Common Market of the Six to leave the Community unaltered. The Commission was also considered as playing a an important role in relations between the Community institutions and the member State Governments. Where the Six were unable to achieve a solution to a problem, the task of elaborating a solution was then given to the Commission, the only organisation that represented the interests of them all. The keystone of the Commission's tactics was the effort to engage the governments in the process of preparation and decision, and to convince them that the very integrity of the Community was at stake. This was essential in the work of the Commission as it understood quite clearly that integration could not proceed against the will of the member States.

The British and the Scandinavians played a role of considerable importance in the OEEC. Even among the Six there were people who felt a certain melancholy after the Schuman Declaration in 1950, that the other economies would instead move towards a free-trade "integration". The tireless and fruitless debates over the setting-up of a Free Trade Area, which occupied most of the first months of the European Commission, had the character of a match between the OEEC and the EEC which worsened the relations between the Commission and London from the start.

3. THE INFLUENCE OF THE SPAAK COMMITTEE ON THE EUROPEAN COMMISSION

3.1 Spaak, Beyen and the Benelux proposal

Following the signing of the ECSC Treaty in 1951, negotiations were opened with a view to creating a European Defence Community (EDC) and a European Political Community (EPC). These were signed by the Heads of State and

²⁰⁷ EEC - Third General Report. May 1960. p. 10.

Government of the six member States of the ECSC in Paris on 27 May 1952, during a period of immense optimism for a unified Europe of the Six. The ratification process, however, dragged out. By the summer of 1954 the EDC Treaty had been ratified by all but France, which in the end rejected the EDC Treaty in the Assemblée Nationale on 30 August 1954. Since a European Political Community was closely linked up with the EDC, and the two treaties had been under negotiation at the same time, a rejection of one automatically lead to the rejection of the other.²⁰⁸

The failure of the EDC also came to be seen as a failure of the whole concept of supranationalism. It seemed therefore difficult to continue the integration process within the framework of the "supranational" High Authority and the ECSC. Among the six member States of the ECSC there was no great support for the creation of other supranational institutions than those which already existed. This was especially true for France where these feelings were particularly strong. In the opinion of Dirk Spierenburg, former Vice-President of the High Authority, the failure of the EDC meant the end to a political, as well as a supranational Europe. However, as he put it, "[A]s far as I am concerned, I never liked the word supranational because it would mean something above the governments. I have always preferred the word community to mean institutions; a Commission and a Council of Ministers, working together in making decisions."²⁰⁹ The two communities established by the Treaties of Rome, the EEC and Euratom, were each granted an executive body, both with the

²⁰⁸ The European Political Community was a result of the insertion of Article 38 of the EDC Treaty which foreshadowed the establishment of a long-term political structure which would govern the supranational elements of the new Europe. Article 38, 2nd paragraph says: "The final organisation which will replace the present provisional organisation should be so conceived as to be able to constitute one of the elements in a subsequent federal or confederal structure, based on the principle of the separation of powers and having, in particular, a two-chamber system of representation." As the contemplated EPC was so closely tied to the EDC, it was generally assumed that a failure of the latter would automatically lead to the dissolution of EPC.

²⁰⁹ *The Relaunching of Europe and the Treaties of Rome*, p. 163. Dirk Spierenburg and Jean Monnet had often conflicting view on the European integration process and how it should be dealt with. As Monnet put it in his *Mémoires*, Spierenburg was the "living incarnation of Dutch stubbornness". Monnet (1978) p. 324.

name "Commission". In both cases they had to share their initiating and decision-making powers with the Council of Ministers to a much greater extent than the High Authority had according to the Treaty of Paris.

Although the prospects of continued European integration seemed grim during the autumn of 1954, the "*relance européenne*" was to occur soon after. All the six member States of the ECSC were in favour of continued integration in one form or another. In retrospect it was probably too big a step to take going from a Community of coal and steel to the much more ambitious Political and Defence Communities. Nevertheless, as a proof of the present will, it took less than a year from the rejection of the EDC to the Messina Conference where the Six agreed to make an effort for further European construction. Although the principle of supranationality and common defence had failed, it was nonetheless an agreement concerning the other principles of the EDC Treaty: the principle of non-discrimination among member States, and integration.²¹⁰

The failure of integration in the fields of defence and common policies meant that the weight had shifted over to economic integration, a situation which seemed particularly suitable to the Netherlands and Belgium.²¹¹ Defence has always been a sector of the profoundest of policies, touching on the foreign policy as well as the sovereignty itself of a state, much more than the economic policy dealing with production and circulation of goods.

Although this period was, and has been, characterised as a situation which caused the simmering crisis in the movement for European unification to boil over, it was also a period of which the process was carried further than ever before.

²¹⁰ According to André de Smet the EDC Treaty was based on four fundamental principles: supranationalism, defence, non-discrimination, and integration. de Smet (1966) p. 25.

²¹¹ Belgium and, in particular, the Netherlands, were all along during the EDC negotiations sceptical to the idea of a defence community without the participation of Great Britain, as well as to the way it all seemed to indicate that the integration process was becoming far too political for their liking.

Leading politicians in western Europe, such as Konrad Adenauer, Walter Hallstein, Paul-Henri Spaak, Jan Willem Beyen and Jean Monnet, were convinced that time was against them, as well as the European idea, if they did not succeed without delay in giving unification a new impulse.

The principle of supranationality was considered as important not only to expand the autonomy of the Community, but also as a means of controlling the military autonomy of Germany, by incorporating her into the European defence system without giving her the right to her own national army. Nevertheless, the French Prime Minister at the time, Pierre Mendès-France, failed to get the EDC Treaty ratified by the Assemblée Nationale to a great extent by refusing all talk on German rearmament. It was a subject full of passion and old ideas, which had no parliamentary majority in the Assemblée Nationale, and which was why there were delays in bringing it to a vote. According to Gaston Palewski, the adviser to the French government on European policies during the ratification of the ECSC Treaty, the ratification of the EDC Treaty and German rearmament was "*le problème le plus grave qu'une Assemblée français ait eu à résoudre depuis 1936*".²¹² A refusal of the EDC, however, opened the way for a German national army, instead of controlling this within the framework of a Defence Community.²¹³ It has been claimed by supporters of the EDC Treaty that this could have been ratified had the Mendès-France Government made the ratification a cabinet question.²¹⁴ Of the same opinion was René Pleven, who thought it was clear that if the Mendès-France Government had committed itself to the question, the Treaty would have been

²¹² Bjøl (1966) p. 19. 1936 was the year of the electoral victory of the Front Populaire, when they formed a government for the first time, together with the Radicals and the SFIO (*Section Française de l'Internationale Ouvrière*).

²¹³ Robert Rothschild, *Une Certain Idée de l'Europe*. In: *Studia Diplomatica* (1981) p. 62. Robert Rothschild was Spaak's "*directeur de cabinet*" at the time of the "*relance européenne*".

²¹⁴ Bjøl (1966) *La France devant l'Europe*, p. 425. "*Pour moi, il n'y a aucun doute que s'il (le gouvernement Mendès-France) s'était engagé le traité aurait été ratifié.*"

ratified.²¹⁵ Others claimed that since a number of parliamentary deputies had taken a position against the Treaty by the spring of 1954, it would not have been ratified in any case.

In the *Assemblée Nationale* on 30 August 1954 it was not the Treaty itself that was put up for a vote. What was voted on was a Gaullist motion to remove the Treaty altogether from the agenda. This refusal to consider the Treaty was supported by 319 votes against 264 with 43 abstentions, some of whom included members of the Mendès-France Government itself. However, the question of whether the EDC Treaty would have been ratified in the case of making its ratification a question of confidence is a highly hypothetical one which is not going to be speculated upon here.²¹⁶ It should only be mentioned briefly that a question of confidence was used to secure the ratification of the Paris Agreements in December 1954, which was to save the Atlantic Pact and a German rearmament within this organisation.²¹⁷ The fall of the Mendès-France Government made planning for the future of Europe somewhat easier, but even with the new government under Edgar Faure, the creation of new supranational institutions had become an impossibility.²¹⁸

²¹⁵ Bjøl (1966) p. 29. René Pleven was Prime Minister of France 1950-52 and Minister of Defence 1952-54.

²¹⁶ To Mendès-France himself it was clear already in advance that the EDC Treaty would be turned down by the Parliament. Nevertheless, to people in Brussels it came as a shock, and the German Chancellor Konrad Adenauer firmly believed in its ratification.

²¹⁷ On 29 December 1954, when the Paris Agreements were put forward as a question of confidence, the Government obtained 287 votes against 256. In comparison, in the vote on 23 December, when the question of confidence was not put, the government had 259 votes against 280. Bjøl (1966) p. 29.

²¹⁸ This Mendès-France Government lasted from 18 June 1954 with Pierre Mendès-France as Prime Minister as well as Foreign Minister, and Edgar Faure as Minister of Finance. After the failure of the EDC Treaty there were several Cabinet reshuffles and in February 1955, Christian Pineau made an attempt on forming a new government, which did not succeed. On 20 February 1955 Edgar Faure formed his government with Antoine Pinay as Foreign Minister and Robert Schuman as Minister of Justice, both of whom were favourable towards European integration. In this government there was as well only one Gaullist member, whereas Mendès-France had between three and five in each of his governments.

At the time when the French Prime Minister René Pleven proposed the creation of a European army,²¹⁹ on 24 October 1950, the Netherlands and Belgium were hesitant to such plans. On the one hand, they would rather see a Germany within NATO. On the other hand, it was believed that the creation of a European army would need political organs, which again would involve the creation of a complete federal state. The Netherlands was very concerned about keeping the Atlantic alliance in NATO. Further, the attitude of the United States and the fact that United Kingdom would not be a part of the new European army were of great concern at that time.

It was also feared that the EDC plans would in the future be expanded into the political field far beyond the original concept. This fear was caused by several public statements the French Foreign Minister Schuman had made about the creation of a European political association. The French proposal for the creation of a political community seemed to become more and more radical, and it was not believed that the French parliament would ever approve the radical pro-integration policy of its own government.

In 1952 the Belgians and the Dutch were a lot more favourable to an economic integration among the European countries. In September of that year the Dutch Prime Minister Beyen brought forward his first proposal for closer economic cooperation between the continental countries of Western Europe. This cooperation was, however, sought to be realized within the framework of the European Political Community. Beyen was again convinced that the realisation of the EDC would pave the way for a closer economic cooperation in Western Europe, but was completely against advanced political integration in Europe.

With the failure of the EDC as well as the EPC in August 1954, the situation thereby changed in favour of the views held by the Netherlands and Belgium since 1950. With France no longer in the natural leading position, it seemed a good time

²¹⁹ From the end of July 1951 the term European Defence Community replaced that of "European Army".

for the Benelux countries to start influencing the European integration process more strongly. As observed by the Belgian civil servant Comte Snoy et d'Oppuers:

*"Jamais les trois administrations et les trois gouvernements de Benelux n'ont atteint ce coefficient d'unité dans la gestion de la politique internationale qu'ils avaient atteint avec Beyen, Spaak et Bech."*²²⁰

Paul-Henri Spaak was a socialist and a Minister of Foreign Affairs in Belgium, a small country of no military importance. Nevertheless, he acquired a prestige almost equal to that of his colleagues Schuman, De Gasperi and Adenauer. Like them, he had allied the talent and skill with a warm conviction and he was made a champion of an old cause supported by the great majority of the population: the *"relance européenne"*. He had previously been the President of the Consultative Assembly of the Council of Europe, from which he resigned in 1951 to the great disillusionment of the federalists within this body. His ideas were received with scepticism in Paris, Bonn and Rome where they were considered premature. On the other hand, they were applauded by the Prime Minister and Minister of Foreign Affairs, Joseph Bech, of Luxembourg, and in the Netherlands by the Foreign Minister Jan Willem Beyen. The latter even thought the ideas insufficient as it carried no prospects of the creation of any real economic solidarity as he desired, progressing sector by sector.

Paul-Henri Spaak initially wanted the relaunch of European integration to be created within the ECSC, and to be limited to start with. The Belgians did not want any pressure put on France, and therefore proceeded with caution. The Dutch Foreign Minister Beyen, on the other hand, defended his ideas of a broader integration. As he stated in a memorandum to Spaak of 4 April 1955: "such an initiative ought to have as its objective to create a supranational community with the

²²⁰ Enrico Serra (1989) *The Relaunching of Europe and the Treaties of Rome*, p. 77. "Never before had the three administrations and the three Benelux Governments reached such a unity within international politics as they did under Beyen, Spaak and Bech." Own translation.

task of achieving economic integration in Europe in a general sense, using a customs union to the achievement of an economic union."²²¹

The Dutch wanted to see the creation of a political community administered by a supranational institution with powers for the gradual development of a joint economic policy. In contrast to Beyen, Sicco Mansholt, the Dutch Minister of Agriculture, believed that political unity should be the basis and starting point of a development towards economic integration. As much as the Belgians wanted no pressure put on France, the Dutch felt that as she had ratified the Paris Agreements, times were more favourable and it was unlikely that France would say no a second time.

Spaak was, like Monnet, in favour of a sectoral integration on the basis of the ECSC, to be supplemented by an atomic authority. In the above mentioned memorandum of 4 April 1955 Beyen wrote to Spaak telling how "*... l'intégration par secteur ne contribue pas à renforcer le sentiment de solidarité et d'unité de l'Europe dans la même mesure que l'intégration économique générale. [...] il est essentiel que la notion d'une responsabilité commune des Etats européens pour le bien commun soit incorporée dans une organisation propre à suivre les intérêts généraux et dont l'organe exécutif est responsable, non pas devant les gouvernements nationaux mais devant un parlement supranational.*"²²²

Spaak had his doubts about whether France would accept such a far reaching

²²¹ Spaak (1969) *Combats Inachevés. De l'espoir aux déceptions*, p. 65. Own translation. "*Une telle initiative aurait pour objet de créer une communauté supranationale ayant pour tâche de réaliser l'intégration économique de l'Europe au sens général, en passant, par la voie d'une union douanière, à la réalisation d'une union économique.*"

²²² Enrico Serra (1989) p. 77. "Integration by sector would not contribute to the reinforcement of the solidarity and unity of Europe to the same extent as a general economic integration. [...] it is essential with a feeling of common responsibility among the European States for the common good to be incorporated into a proper organisation to continue the general interest, and where the executive body is not only responsible towards the national governments, but towards a supranational parliament." Own translation.

proposal as a common market and feared "*l'échec*" which had happened after the EDC. However, he agreed, together with the President of the Council and Minister of Foreign Affairs of Luxembourg, Joseph Bech, to go along with the Beyen proposal, and in case of failure put forward a more modest proposal based on the ECSC. Unification in the economic field was also considered easier than political integration. On the one hand, economic progress had already been made in the ECSC, and, on the other hand, economic questions caused less controversy in public debate than the political problems of integration.

With the initiatives that came forth from the Benelux countries, in particular from Beyen and Spaak, the smaller countries showed themselves to be brave in a way which was going to be greatly welcomed by "the big". They had also already experience with the Benelux customs union which was set up in 1948. As a consequence, and while defending their own interests, they could serve as intermediaries between the parties involved in searching for a compromise. Beyen set up a plan against further sectoral integration which could be either within or without the ECSC. He further rejected "the general opinion that horizontal economic cooperation in Europe would only be possible on an intergovernmental basis and cooperation on a supranational basis would only be possible for specific sectors, related to those administered by the ECSC".²²³

The Belgian and Dutch delegations showed a pragmatic attitude during the negotiations, placing more importance on the role of the future institutions than on the "*règles préétablies*". The Belgians took advantage of the presidency to the fullest, not only to satisfy their national interests, but also to contribute to the success on the whole. The joint Benelux approach, drawn up by Dutch and Belgian civil servants for the Messina Conference in June 1955, argued that "[A] unified Europe could be created by means of developing common institutions, the progressive fusion of the national economies, the establishment of a great common

²²³ Enrico Serra (ed) (1989) pp. 143-144.

market and the progressive harmonisation of social policies".²²⁴

3.2 France

After the rejection of the EDC Treaty it became impossible for France to take any leading role in the relaunch of Europe. The integration process had seemed to be set back because of her, and the French Government of Pierre Mendès-France was weak both within France as well as abroad. Even Jean Monnet, although himself very much present on the scene, turned to Spaak and the Benelux governments.

On the very same evening of the French rejection of the EDC, Monnet started his weeks of consultations with others from the member countries of the ECSC; Antoine Pinay, René Pleven, Robert Schuman, Maurice Faure,²²⁵ Guy Mollet,²²⁶ Christian Pineau, Pierre Mendès-France, Paul-Henri Spaak, Jean Rey, Joseph Bech, Giuseppe Pella, Ludwig Erhard, Walter Hallstein and Konrad Adenauer were his principal contacts. The Frenchman Pierre Uri, an advisor to Jean Monnet in the High Authority, was one of the co-authors of the Spaak Report and had in fact been recommended to Spaak by Monnet himself. Uri was a partisan of a European political union, and according to Spaak, he must be considered as one of the principal architects of the Treaties of Rome.²²⁷

As has been mentioned above, Monnet was in favour of extending the integration process started by the ECSC into other areas. It was a Community that already existed and was well established, and its competencies could be extended to include competition, gas, electricity and atomic energy. To Monnet it seemed wiser not to depart from a model that had proved its worth and had become an accepted

²²⁴ Enrico Serra (ed) (1989) p. 151.

²²⁵ Minister of State at the French Foreign Office.

²²⁶ Secretary of the SFIO (Section Française de l'Internationale Ouvrière).

²²⁷ Pierre Uri had been with Jean Monnet in the Planning Commissariat since the late-1940s and was one of Monnet's principal advisers in drafting the Schuman Plan as well as in the High Authority.

feature among its member States. He therefore saw the next step as extending the activities of the High Authority to include the above mentioned areas. The sector of atomic energy, however, would require to be dealt with in a separate community.²²⁸

After the defeat of the Mendès-France Government in January 1955, which brought the Socialists to power under the leadership of Edgar Faure and Antoine Pinay as Foreign Minister, a more open-minded approach to European policy was expected of France.²²⁹ However, a gradual change of opinion did not begin to appear until the spring of 1956. This process was initiated to begin with by a few European-minded officials close to Prime Minister Guy Mollet who was convinced of a long-term benefit to France from participation in the Common Market.²³⁰

The French were the only ones really to be in favour of a sacred sovereignty. However, the dialectic of Spaak convinced his French colleagues to accept a limited system balanced by the majority vote, although surrounded by many precautions and long transition periods. For those in favour of a federal Europe, it was nevertheless a defeat. Moreover, it was also clear that the defenders of sovereignty would not accept giving up any further sovereignty. In France there was opposition to European integration within the administration as well as the army. The administration was apparently against giving sovereignty to supranational bodies in connection to the ECSC and the later EEC. The army was opposed to the EDC as well as Euratom.²³¹

²²⁸ Monnet (1978) p. 401.

²²⁹ The Edgar Faure Government was instituted on 23 February 1955. On 29 November the same year it lost a vote of confidence in the *Assemblée Nationale*. General elections were held on 2 January 1956 and the Guy Mollet Government was instituted a month later, on 1 February.

²³⁰ Guy Mollet became Prime Minister in January 1956, with Mendès-France as Minister of State, Pineau as Foreign Minister and Maurice Faure as Secretary of State for Foreign Affairs.

²³¹ Bjøl (1966) p. 443.

Monnet, together with his staff, had worked out a plan that envisaged extending unification in the field of atomic energy and placing it under the High Authority. "Monnet was considered as the 'last Community bastion' in Europe after the failure of the EDC. It was not only a question of defending the option of supranationality in relation to the option of intergovernmental cooperation. We simply were of the opinion that it was only within a Community framework that Germany could become integrated in Europe, and that Europe could play the political role it ought to in the world."²³²

The deliberations of the Belgian, Dutch and also the German Governments were quite different. Here the debate concentrated on progress towards unification in the economic field. Spaak succeeded in the course of extensive talks with Monnet and Beyen in bringing their diametrically opposed ideas, Euratom and a Customs Union, together in a single memorandum. The national economies were gradually to be merged with one another and common institutions with powers of decision established.

The institutional questions were particularly delicate to France because of the "*querelle*" over supranationality. It gave instructions to its experts to do "*ce qu'il fallait faire*", without worrying about the powers or structures of the institutions. They were asked to regulate the elaboration of the institutional system in a way that would bring real powers to common institutions without being dictated by ideological or political considerations. The French were in favour of a Common Market without supranational institutions, which was considered better than no agreement at all.

Conversations between Monnet, Dr. Ophüls²³³ and Pierre Uri in 1955 show that the Germans could be interested in Euratom if at the same time an economic community also would be set up. Pierre Uri is said to be the brain behind the idea of connecting the two proposals together with the ideas of Spaak and Beyen, which

²³² Max Kohnstamm on Monnet. In: Enrico Serra (1989) p. 175.

²³³ German diplomat and head of the western European section of the Foreign Office.

eventually led to the Messina Communiqué.²³⁴

3.3 Germany

In Germany strong forces were arguing in favour of continuing the European integration process. The concept of partial integration was considered difficult to defend theoretically and even more difficult to realize politically. Consequently, in the Ministry of Foreign Affairs, which was highly influenced by the Chancellor and Foreign Minister Konrad Adenauer, there was no doubt that the best form of integration was one as complete as possible, which also included the institutional dimension. At the opening session of the Spaak Committee, Walter Hallstein made it clear that what Germany wanted was the outcome of the negotiations to be another set of supranational institutions, despite the fact that the Spaak Report recommended the Council of Ministers to be the main decision-making body. The Germans emphasised the functional and institutional dimension of integration and believed that the institutional rules of the ECSC ought to be applied to any new and further approach. Nevertheless, it was pointed out that the approach was not first to create the institutions, but rather to let the institutions develop accordingly. In other words, an integration in stages.²³⁵

In the Schuman Plan Department of the German Ministry of Economic Affairs, deliberations were taking place under the direction of Hans von der Groeben for a customs union.²³⁶ A memorandum put forward at the Messina Conference

²³⁴ Bjøl (1966) p. 431.

²³⁵ In the Ministry of Economic Affairs, Erhard was sceptical towards proposals for any European economic integration which he considered potentially dangerous for trade liberalisation on a world wide scale, which he further felt would lead to regional protection and state dirigism. He supported rather the idea of the setting up of a European Free Trade Area which would also include the United Kingdom. (See Chapter V)

²³⁶ Hans von der Groeben was in 1952 appointed Director in the Ministry of Economic Affairs, dealing with European affairs and the ECSC in particular. He later became a member of the first European Commission in 1958. Bjøl (1966) p. 179.

proposed the removal of all barriers to trade within the areas covered by the ECSC. To Brussels and The Hague signals were sent indicating that the German Government would not support proposals for a new supranational cooperation. This was also based on the widespread opinion that since France was the potential stumbling block for new integration efforts, the German Government would not accept any proposals to go beyond what the French Government could accept.²³⁷ In fact, the French Foreign Minister Antoine Pinay, himself a pro "European", was restricted by his government which was in favour of an effort of sector integration in the fields of energy and transport.

Walter Hallstein, the German Permanent Under Secretary of the Foreign Ministry, showed himself to be more in favour of the Common Market approach. However, regarding the institutional issue, the German government would not go further than the setting-up of a consultative body. It was stated in the minutes of the meeting of the Ministers of Foreign Affairs in Messina that *"le Gouvernement fédéral est d'avis qu'il faut éviter de créer de nouvelles institutions Européens"*.²³⁸ Chancellor Adenauer, although favourable to economic integration, believed the first task would be a political union. He feared that to concentrate on economic tasks would prevent the achievement of this. Nevertheless, he did understand that an economic community could create solid links between the member States of the ECSC, and in particular between France and Germany. As recorded by Hans von der Groeben, Adenauer saw the coming EEC Treaty not as "a gospel of truth, not an objective in itself, but an instrument for the furtherance of economic and political union in Europe". He further believed that a "Franco-German reconciliation, understanding and cooperation were not only prerequisites for European unification

²³⁷ Enrico Serra (1989) p. 153.

²³⁸"Projet de procès-verbal de la réunion des Ministres des Affaires Etrangères des Etats membres de la C.E.C.A., Messine 1er et 2 juin 1955", Luxembourg 13.6.1955. In: Enrico Serra (1989) p. 155. "The Federal Government is of the opinion that the creation of new European institutions ought to be avoided." Own translation.

but also of intrinsic value".²³⁹

After the experience of the EDC it hardly seemed likely that France's government under the leadership of Edgar Faure would be prepared to make its restrictive attitude towards European integration more flexible. Only politicians of the Mouvement Républicain Populaire (MRP) and the Foreign Minister, Antoine Pinay (Independent Republican), showed an interest in a new European initiative. In order to get France to the negotiating table it was necessary to include Monnet's Euratom project in the discussions. Germany, on the other hand would not accept this unless it were to be developed within the same framework as a general common market.

3.4 The Messina Conference

On 1 June 1955, less than a year after the defeat of the EDC, the Foreign Ministers of the Six met in Messina to "charge an intergovernmental conference or conferences to work out, with the appropriate aid of the Community's institutions, the necessary draft treaties for the achievement of the next steps in European integration, of which the establishment of the European Coal and Steel Community was the beginning".²⁴⁰ At the Messina Conference Spaak and Beyen were pleading for partial integration in the realms of atomic energy and a customs union,²⁴¹ while the German side, led by Walter Hallstein, sought comprehensive economic integration. In the beginning Pinay rejected all the propositions but then let his own Government's interests in a common programme of nuclear research become evident. He refused, however, to transfer responsibility in this field to the High Authority.

The result of the Messina Conference of June 1955 was the setting-up of an

²³⁹ von der Groeben (1985) *The European Community. The Formative Years*, p. 39.

²⁴⁰ Mayne (1970) *The Recovery of Europe - from devastation to unity*, p. 287.

²⁴¹ According to Spaak it was "more desirous to obtain concrete results than to defend a theory". Ibidem.

Intergovernmental Committee of delegations from the foreign ministries of the six countries from which a Resolution was adopted reading: "The Governments believe that the time has come to make a fresh advance towards the building of Europe. They are of the opinion that this must be achieved first of all in the economic field." It further stressed the need "to work for the establishment of a united Europe by the development of common institutions, the progressive fusion of national economies, the creation of a common market and the progressive harmonisation of their social policies".²⁴²

Talks and negotiations in the committee resulted in the issuing of the Spaak Report on 21 April 1956. The Committee was assisted in its work by the High Authority of the ECSC, with the United Kingdom being invited to take part. The report offered a concrete plan of action towards the realising of a community of the atomic industries and a common market. Although it did not offer any concrete steps in the direction of a political union it was not excluded as a possibility for the future: "While waiting for a more confined unit of monetary, budgetary and social policies, it is necessary to distinguish between the questions of general economic policies which belongs to the domain of the governments, and problems which are linked to the functioning of the common market."²⁴³

The Intergovernmental Committee met in November 1955 under the leadership of Spaak. His personality, together with his initiatives and the fact that he was a leading political figure had made him the obvious choice of leader. However, other personalities like Hans von der Groeben and Pierre Uri played a leading part in working out an overall plan. It was this which was accepted as the basis for treaty negotiations at the conference of foreign ministers in Venice in May 1956. What had

²⁴² Mayne (1970) p. 236.

²⁴³ Report by the Heads of Delegations at the Ministries of Foreign Affairs, Brussels 21 April 1956, p. 24. *"en attendant une unité plus étroite des politiques monétaires, budgétaires et sociales, il est nécessaire de distinguer entre les questions de politique économique générale qui demeurent le domaine réservé des gouvernements, et les problèmes qui sont liés au fonctionnement même du marché commun."*

originally been intended as a technical report became a political plan of action which for the governments was no longer completely without obligations but nevertheless permitted them at any time to distance themselves from any unacceptable proposal.

A unified Europe could be created by means of developing common institutions, the progressive fusion of the national economies, the establishment of a great common market and the progressive harmonisation of social policies. The Belgian administration prepared a practical proposal for sectoral integration in the fields of transport, "traditional" energy, and atomic energy. The Dutch administration on the other hand came up with a proposal for the establishment of an economic community based on a common market. The Memorandum issued by the Benelux countries was careful in its wording. It did not mention the word "supranational", nor the concept of a "High Authority", so as not to awaken any anti-supranational sentiments in France or any other country.²⁴⁴ The Declaration made by the Messina Conference, although heavily based on the Benelux memorandum, showed also a suppression of its institutional suggestions. Where the Benelux had proposed a "common authority", the Declaration stated the intention to "study" the creation of a "common organisation".

The experience of the ECSC showed that the process of partial integration had already reached the limits of its possibilities within only a few years and could therefore not provide a new impetus for the aim of overall integration. As far as the institutional form of the new economic organisation was concerned, the ECSC Treaty served nevertheless as a model. It was, however, significant not so much that the basic institutions were retained but rather more that, barely two years after the failure of the supranational EDC and in the face of continued opposition in national government circles, the proposition that a federal institution be built into the decision-making structure of the new Community was accepted in principle by the

²⁴⁴ The use of the word "supranational", which had first been used in the ECSC Treaty of 1951, ended with the EDC Treaty where it was used in Articles 1 and 20, and made explicit in Article 80. Because of the opposition among the member States the word was taken out in later community treaties.

governments of the Six.

France was not prepared to grant powers of control to the Community in policy areas such as economic and monetary policy issues. Its financial situation at the time was not good and the French negotiators of the Treaty of Rome, therefore, had to insist on the insertion of a series of clauses which would have made it possible for France to enjoy in practice all the benefits of the Common Market, without assuming its most important obligations.²⁴⁵ In Germany there was a fear of a too highly planned system that would stand in the way of the principles of market economy. In this way significant areas of policy in the field of economic integration remained in the hands of the member States. The nature of the institutions to be created and the description of the principles that were to guide them were determined by political compromise and by functional decisions which were needed to put the Treaty into practice. The dual system of a Council and a Commission arose on the one hand because the sovereign member States wanted to retain the ultimate powers of decision and legislation and, on the other hand, because of the necessity for an independent organ, representing the will of the Community, to ensure the application of the Treaty provisions at the supranational level. To this end an institutional system was set up with the aim of doing justice to both the intergovernmental and the supranational concepts. The material and institutional provisions of the EEC Treaty were a mirror image of the powers which it had been possible, with the agreement of their respective parliaments, to take from the national governments in the course of the negotiations and transfer directly or in stages to the Community institutions.

The Spaak Report suggested the creation of an independent institution with a common responsibility, which could act by a simple majority of its members. This institution was to be called the "European Commission". Depending on the

²⁴⁵ The other countries had changed their minds about being prepared to let France maintain important restrictions for as long as its balance of payment remained in deficit. However, these clauses never had to be invoked as the financial and monetary reforms carried out throughout 1958 made it possible to assume the full obligations from the beginning.

circumstances, it would have powers of investigation, of initiating proposals to the Council of Ministers, and to administer readaptation and investment funds. In addition, the European Commission would be in charge of administering the Treaty and watching over the functioning and development of the Common Market. It was further suggested, according to democratic principles, that it should be responsible to a parliament, where the Common Assembly of the ECSC could fulfil such a task if it were suitably enlarged. As it was written in the Spaak Report:

*"Une Commission européenne, dont le président et les membres seraient nommés en commun par les gouvernements, et qui pourrait ainsi agir à la majorité simple, sera chargée d'administrer le traité et de veiller au fonctionnement et au développement du marché commun. Elle aura [...] des pouvoirs de décision - un rôle d'instruction dans les affaires appelées à être soumises à une procédure juridictionnelle - la charge de propositions à soumettre au Conseil - une fonction de gestion pour la réadaptation ou pour l'examen de projets d'investissements, qui feraient appel à un financement commun."*²⁴⁶

The setting-up of the suggested common market would mean a free movement of goods, services, workers and capital between all member States. However, this would also only mean a partial economic integration as this common market would not involve interference with national budgetary, financial or social policies, nor the establishment of a single monetary system. Although there was pressure for continuing the European integration process started by the ECSC, there was a serious setback after the rejection of the EDC, which meant that the government in France in particular would not at that time commit itself to further supranational moves.

²⁴⁶ Comité Intergouvernemental créé par la Conférence de Messine. Rapport des Chefs de Délégation aux Ministres des Affaires Etrangères, Bruxelles, 21 avril 1956, p. 25. "A European Commission, where the president and the members will be nominated in common by the governments, and who may act on a simple majority, will be in charge of administering the Treaty and to watch over the functioning and development of the common market. It will have, according to the situation, - a decision-making power - an instructing role in affairs called to be subject to a judicial procedure - the responsibility of sending proposals to the Council - a management function for the readaptation and examination of investment projects, which would appeal to a common financing." Own translation.

Instead of working out several proposals that would be negotiated later, the Spaak Report presented only one plan which the political actors had to either accept or reject as it was. It was accepted more or less unchanged. The "Messina Resolution" tried to do justice to all the standards of integration but it could not eliminate the real differences of opinion and interest regarding further steps towards integration. The Messina Conference put European integration back on the negotiating table. It was decided that new talks would be on economic integration, and a certain method for these talks was agreed on.

The distribution of power between nations, which was to be represented in the Council of Ministers, and the supranational power represented by the Commission, tended much more in favour of the nation-states compared to what Hallstein had indicated as desirable to Germany. Neither was it of much satisfaction to German civil servants like Ophüls or von der Groeben who had fought for a common market. However, with the French objections to a greater degree of supranational powers, it would have been impossible to go any further at that time.

4. THE ORGANISATION OF THE EUROPEAN COMMISSION

4.1 Formal powers of the European Commission

There were two fundamental principles concerning the "gradualist" approach to integration. One was that the sovereignty of the nation-states would not be destroyed totally. Central organisations of some kind would instead be developed as the need arose. The second was that any new structures emerging would be based on democratic principles. "The Community Method", therefore, relied to a great extent on the existence of central, "supranational" institutions, independent of the national governments. As the integration process proceeded these would take over more and more of the decisions. These institutions were also thought to have wide-ranging effects on political behaviour, and would therefore provide an impetus for a growing political union.

The Treaty establishing the EEC envisaged eventual integration of the whole economic sector. However, most of the major decisions were not taken by the Treaty but fixed for later dates, which is why the EEC Treaty is often referred to as a "*Traité cadre*", or framework treaty. The Commission of the EEC had fewer executive powers of decision than the High Authority of the ECSC, and the role of the representatives of the member governments in the Council of Ministers was greatly expanded. One reason for this was that the High Authority had tended to seek agreement from the member governments before taking any major decisions. The member governments were not ready to give up too much power to a supranational Community body which they would have little control over.

Because of the fate of the EDC and the EPC, the initiatives which led to the Treaty of Rome were far more cautious than earlier approaches, particularly in what concerned the ECSC. The Treaty of Rome was also rather vague about the ultimate prospects of political union. This was left entirely to the initiative of the Community institutions and the member States. The main power of decision in the EEC was to be shared between the independent Commission and the Council of Ministers representing the member governments, although the main decision-making body was to be the Council. The Commission, on the other hand, was to act as an independent spokesman of the common interests with an important right of initiative. Its task would be to bring about compromises between the representatives of the member States, while ensuring that the solutions reached would be in the best interest of the whole Community. This task was often to be in conflict with the other main institutional goal facing the representatives of the Commission, namely the task of defending, or promoting the interests of the Community as a whole. To perform its tasks, the Commission would have to be both "European", or partisan, and independent, to perform the function of the impartial mediator among the various national positions.

The scope of integration envisaged in the Treaty of Rome was different from the Treaty of the ECSC as it involved the whole economic sector as well as important elements of social policy. The Treaty created an evolving political system

with a constitution, the Treaty of Rome, a set of political institutions, and a number of voluntary political groups and associations. The Treaty set out the objectives of the Community, it laid down the essential organisation and structure of the institutions, and determined the relations between them. Further, it vested the institutions with the power to make Community laws and it provided means by which these laws could be enforced.

By the people who drafted the Treaty of Rome the Community was considered as basically political. The Customs Union was never looked at as an end in itself, but as a step towards a political federation, or at least a political "constellation" of powers, which would behave as a unit in its relations with the rest of the world. According to Robert Marjolin, the only convincing argument in favour of a united Europe had always been the political argument. "A united, or more united, Europe might be able to make a more effective contribution to the solution of the most important current world problems than can the European countries acting separately. [...] Only through unity can Europe regain its proper place in the world and exercise the influence that is both its right and its duty."²⁴⁷

The immediate objective of the Treaty of Rome, however, was the creation of a customs union by the removal of all restrictions to trade between the six countries, and the creation of an economic union by the establishment of common policies.²⁴⁸ According to Article 103 of the Treaty, the Commission had an important part to play in this matter in that "[M]ember States shall consider their short-term economic policy as a matter of common interest. They should consult with each other and with the Commission on measures to be taken in response to

²⁴⁷ Robert Marjolin, *The Unification of Europe. Economic and other problems*. The University of Edinburgh. Encyclopedia Britannica Lecture, 1 May 1969.

²⁴⁸ Article 2, Treaty of Rome: "It shall be the task of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States."

current circumstances." Hence, a development of some kind of economic union was implied in the Treaty, but not explained. The progress would depend on the initiative and will-power of the Community institutions and the national governments. Nevertheless, there had been a certain lack of political unity which proved a restraint to joint action between the Six.

For the EEC to be more than just an industrial customs union it was clear that it had to become more dynamic. The creation of the common market, therefore, was expected to be the kind of dynamic necessary for further integration. Nevertheless, these supposedly dynamic elements did not seem to be effective without any measures of political initiative. This was, in many ways, the dilemma of the Commission who, in its early years, tried to establish its role as initiator of policies but lacked the power of making decisions on its own on all the most important questions. According to Article 157 of the Treaty of Rome, the members of the Commission should carry out their functions in "complete independence" and "in the general interest of the Community". This meant that the members of the Commission could neither request, nor accept instructions from any member government or other body, and the member states must not seek to influence the Commissioners in carrying out their functions. The Commission must be impartial politically as well as indifferent to nationality. Further, in its role as "European", the Commission must be both partisan and protagonistic. Therefore, the Commission must be characterised as being more than a civil service or secretariat, and as having executive-type functions such as taking initiatives, laying down rules, and generally interpreting and furthering the common interest.

In the opinion of David Coombes, the formal powers of the Commission could be classified into five groups.²⁴⁹ The first, and most important one, was to initiate Community legislation. Secondly, it had the role of implementing Community legislation. This meant that the Commission is what has been called the "guardian of the Treaty". It can also make certain delegated legislation, meaning that it has the

²⁴⁹ Coombes (1970) pp. 81-82. A more extensive discussion of the functions and role of the Commission will come in Chapter III.

power to act alone and on its own initiative in certain situations. Thirdly, the Commission was a "technical and advisory body" as well as, fourthly, acting as the diplomatic representative of the Community in relations with third countries. In the execution of this role, it played an important part in the Kennedy Round of the GATT negotiations, which will be discussed below. Lastly, the Commission was the so-called "conscience of the Community". It had a general responsibility of "filling out" the provisions of the Treaty, of reminding other parts of the Community of its fundamental objectives, and of suggesting new paths for the Community to follow. As the "protagonist of the common interest", the Commission assumed "a special responsibility" including the "thinking out and formulating of the main lines of the action to be taken". In its First General Report, the Commission defined its roles this way:

"The lines on which the Community is moving determine the tasks and responsibilities of the institutions and the role to be played by each of them. Far from being merely the machinery for executing a series of technical measures, they form a dynamic element which will bring about the progressive approximation of national policies and, later, the application of a common policy. In this matter the Commission is assuming a special responsibility. It is an independent body capable of taking a broad, objective view of the Community's problems. As guardian of the Treaty it is first and foremost responsible for thinking out and formulating the main lines of the action to be taken."²⁵⁰

As one can see from this short description of the roles of the Commission, its powers were certainly wider than what is normal in a "classical" bureaucracy. In particular the Commission's power to initiate policies was far from that of a "classical" bureaucracy of the Western democracies. A more thorough discussion on this matter will follow below.

²⁵⁰ EEC - First General Report 1958, p. 13, Section 8.

4.2 The Community speaking with one voice

A. The Kennedy Round

After having discussed the formal powers of the Commission above, the attempt of this section will be to see how these powers were used in the decision-making process. The Kennedy Round of the GATT negotiations²⁵¹ and the Luxembourg - Lorraine case²⁵² will be used as examples, although somewhat briefly. What is interesting here is mainly the part played by the Commission.

According to the neofunctionalist scholar, Leon N. Lindberg, there were four aspects of the role of the Commission in the Community decision-making process that were of particular importance.²⁵³ The first is that it was required to reduce the intensity of conflict by "isolating issues and identifying common interests" to bring about unity among the member states, and avoid major conflicts. Secondly, the Commission had to interpret its own role in a way that would ensure that its own competence could be increased, and its support gained. Thirdly, Lindberg argued that the Commission had to compensate for its existing lack of competence by promoting consensus among the member states, and fourthly, it had to include national policy-makers in the decision-making process at the Community level. To fulfil these last two aspects, the Commission engaged national civil servants and interest groups in the decision-making process. According to these last two aspects therefore, Lindberg argued that the success of the Community in the early years was determined by the Commission's central tactic of "co-opting" from national administrations and interest groups. This last point was also seen as important in the Commission's role as "honest broker" among the interests of the member States. The involvement of national officials at an early stage was used as a way of cutting corners and to facilitate the progress in the Council of Ministers. Another reason

²⁵¹ This round of GATT negotiations lasted from 1964 until 1967 and were started on the initiative of the American President J. F. Kennedy.

²⁵² The Luxembourg - Lorraine case was under discussion from the end of the 1950s throughout the 1960s.

²⁵³ Coombes (1970) p. 93.

why national civil servants were extensively used in the Commission was because the Commission often felt obliged to draw up proposals that would have the greatest possible chance of being accepted by the Council, as a failure to do so might have slowed down the development of the whole community.

A Committee of Permanent Representatives was set up as a result of the coming into force of the EEC.²⁵⁴ It was meant to be a link between the Community and the individual member States. The Committee consisted of the national delegations of the member States, acting as a kind of Embassy to the Community, being in charge of coordinating the groundwork for the Community decisions. It would assist the Council of Ministers in preparing its discussions in meetings assisted by the Commission. Its more political role would be in preparing legislative texts to be adopted. A tradition where the President of the Commission would receive the Chairman of the Committee each week was started so as to "exchange information or impressions on important current or future business, to discuss difficulties and possible solutions, and where appropriate to co-ordinate the efforts which the Chairman of the Committee and the Commission will make in their respective fields to bring about any necessary decisions".²⁵⁵ The Commission was further represented on the Committee by its Deputy Executive Secretary, or even sometimes by the Executive Secretary himself.

As the Committee acted as a "watchdog" of the national interests, the interaction between the Committee and the Commission could often be said to have had a certain influence on Commission decision-making.²⁵⁶ The "dilemma" often

²⁵⁴ The Committee of Permanent Representatives has existed since 1958. It did not have any legal status in the Treaty of Rome, but was mentioned in Article 151 as a committee which "may" be established. It has only been legally recognised, however, from 1965, in Article 4 of the Merger Treaty.

²⁵⁵ Noël (1967) *The Committee of Permanent Representatives*, p. 238.

²⁵⁶ As the Committee of Permanent Representatives represented the interests of the national governments, and the Commission, although supposedly a supranational body, often had to take this into consideration before presenting its proposals for legislation, one might say that there has been a certain influence here.

seen with these links between the Commission and the Committee of Permanent Representatives was, however, that, in contrast to the Commission itself, the members of the Committee were representatives of the national governments and therefore only responsible to these. The Committee's importance, therefore, was regarded by many as the threat to the "European" element in the Community decision-making, as well as a challenge to the Commission's right of initiative.²⁵⁷

The Kennedy Round of the GATT negotiations has been seen as a prime example, as well as the first one, of the Commission acting in the field of positive integration. It was considered as a major advance in European integration itself. The Commission was, in these negotiations, able to act on behalf of the Community as a whole which was believed to be the role the Commission had to perform increasingly if the Community was to move from being a customs union to becoming a full economic union. The negotiations were also seen as a test of the Community's internal cohesion and of the effectiveness of the type of integration the Community represented.

In the early stages of the negotiations the Commission was mostly concerned with formulating a general policy on the Community's approach to the negotiations, and with the difficult question of finding a common position on disparities. A rather difficult task considering that at that time the Community neither possessed an industrial policy, nor yet a common economic policy. Nevertheless, under the leadership of President Hallstein, a real team spirit was created in the efforts of trying to reach common decisions.²⁵⁸ The dilemma of the Commission involved making the negotiations succeed and at the same time preserving internal unity within the Community.

In the Kennedy Round negotiations the Commission had to take important

²⁵⁷ For a further discussion of The Committee of Permanent Representatives, see Chapter IV, 3.4.

²⁵⁸ View expressed by Emile Noël in an interview in Paris on 12 December 1994.

decisions as well as to play an important mediating role. Therefore, the role of the Commission depended as much on its independence and commitment as on its skill as a mediator. It must be said, on that basis, that the Commission had to be characterised as being much more than an administrative organisation or a bureaucracy. What was facing the Commission was the need for "critical", incentive decision-making in constantly changing situations. It had to be innovative and highly flexible, and skilled at improvisation. This was a fact although the final decisions on general policy rested with the Council.

One of the characteristics that has been identified as the success of the Commission in the Kennedy Round was that the officials all stressed the point of "having a policy of its own". This aspect must certainly be said to be rather unusual for civil servants who, according to a classical definition, normally should have to follow the policies worked out by their governments at the time. According to the members of the Commission themselves, the aspect of "having a policy of its own" was even seen as more important than such aspects as the "ability to appeal for support over the heads of national governments", "negotiation flexibility", and "commitment to European integration".²⁵⁹ The fact that the members of the Commission had to show a considerable measure of political leadership, as well as technical facility and negotiating skills, has been characterised as the reasons why the Commission had the ability to take on the role as the representative of the Community as a whole so successfully. In the final stages of the negotiations the Commission's negotiators showed an ability to take up a position in response to the situation in Geneva, where the negotiations took place, rather than looking at what was happening in the Council. This is a rather unusual situation for a bureaucracy²⁶⁰ as the Commission should normally have had to negotiate according to strict orders from the Council of Ministers. Neither "classical" bureaucratic elements, nor internal "political" considerations seem to have been taking precedence. There was a lack of emphasis on hierarchical structures, an ease of

²⁵⁹ Coombes (1970) p. 211.

²⁶⁰ That is if one agrees with the definition of the Commission as a bureaucracy.

personal relationships, as well as a confidence in the colleagues' approachability and discretion. An explanation might possibly be that the goals of the Commission in the Kennedy Round were not solely to bring the negotiations to a successful conclusion. They also had to consider other important aspects like the need to maintain unity between the Six, and the desire to use the negotiations as a means of furthering the Community policies.

During the Kennedy Round negotiations, the representatives of the Commission who were involved had to show a considerable measure of political leadership as well as technical facility and negotiating skill. Further, a formulation of distinct Commission policies was needed on most issues concerned in the negotiations, were the negotiations to succeed. Achievement of these conditions could not depend entirely on the member States for the positions the Commission took in Geneva, as that would have made it very difficult for taking initiatives. This way, the Commission came to act in a very similar way to that of the national governments with which it was negotiating.

As David Coombes has pointed out, the Kennedy Round could be seen as an example of the Community responding successfully to challenges of positive integration.²⁶¹ As a condition for this success he stressed the Commission's ability to act, particularly towards the final period of the negotiations, with a certain element of political leadership. Later on in its development, however, it might be argued that the Commission became an increasingly administrative and bureaucratic organisation.

²⁶¹ With "positive" integration Coombes refers to "the formulation and application of coordinated policies designed to fulfil broad economic and welfare objectives", as opposed to "negative" integration which "consists of the removal of discrimination". Coombes (1970) p. 54.

B. The Luxembourg - Lorraine case

Another example of the Commission's decision-making procedure in the early years, which only will be mentioned briefly here, was the dispute between the southern section of the Belgian Province of Luxembourg and the northern part of the French region of Lorraine. This was a case of regional development where the Commission lacked an explicit authority to act. The role of the Commission was, therefore, rather limited in this case. It served merely as an observer as it would only act if called upon by the national governments. The two officials concerned with this case were not any typical civil servants, where one was not even a full-time official. It has therefore been argued that this issue never would have got as far as a Commission's recommendation to the two states concerned unless personal commitment, individual relationships and background, and influence from the officials on the decision-making procedure had been possible. Nevertheless, as an answer to a question on Commission involvement from M. Toubreau, the Commissioner Robert Marjolin told the Parliamentary Assembly that "the Commission was at the disposal of the Belgian and French governments - as well as other governments of the Community to sort out other frontier problems". However, he concluded by saying that it was up to the national governments in the end to invite the Commission to take part in this work.²⁶²

4.3 The European Commission - a bureaucracy?

What is meant by "bureaucracy" is "a system of administration based upon organisation into bureaus, division of labour, a hierarchy of authority, etc".²⁶³ Despite this explanation of fairly simple character, the word "bureaucracy" has seen many uses. It is used in a constitutional sense referring to the central administrative apparatus of the State as a list of organisations and institutions. In a sociological sense it refers to certain characteristics which affect the ability of organisations to

²⁶² Parlement Européen, 23 mars 1964. Question Orale No. 1, "*Coopération entre le nord de Lorraine et le sud du Luxembourg belge*", pp. 65-66.

²⁶³ Collins Concise Dictionary *Plus*

achieve their purpose.

One of the most prominent theorists of bureaucracy was Max Weber whose "ideal-type" bureaucracy was an abstraction from the characteristics which seemed to make large, complex organisations so effective in modern society. Bureaucracy, thus, according to Weber, is ideally represented by an administrative system in which everything is sacrificed to the rational pursuit of specified goals. There is a clear division of labour which enables a high degree of specialisation. Officials are recruited purely on the basis of technical qualifications and not as a result of personal influence. In this "ideal-type" bureaucracy, a strong hierarchical structure is established and at each level authority is clearly restricted. Further, a uniform system of rules govern all individual official decisions and actions, and ensures continuity in decision-making. Officials are also expected to avoid making personal considerations in all their actions. Weber's description of bureaucracy fits in many ways with what is associated with Western democratic civil service and other administrative agencies at the level of the State, also what concerns the six member States of the EEC. What will be interesting to see, therefore, is to what extent these characteristics were transferred to the organisation of the Commission, if at all.

The question we are left with at this stage is whether the Commission could be characterised as a bureaucracy, a political leadership, both of these, or any at all. It must be said that certain characteristics of the Commission made it very different from political leaders or the ministerial heads of government of a nation-state. The first important point is that the Commissioners were not elected by a popular majority with any mandate to govern. They were not, therefore, responsible to any directly elected representative assembly. There is the point to make here, nevertheless, that the Commission had to face the possibility of a motion of censure by the Parliamentary Assembly. However, this could only be aimed at the Commission as a whole, and the Parliamentary Assembly was not at the time a

directly elected body.²⁶⁴ The member governments themselves were responsible for the appointment of the members of the Commission, which was not usually discussed between them. Some might here argue that the Commissioners could not be said to be collectively responsible for their tenure of office as their individual responsibility lay with their own national governments. However, this would not be the way the Commissioners themselves regarded their task, particularly not in the early days of European enthusiasm, identified by a common feeling of collectiveness.

In the very early days of the Commission, its posts were distributed by the so-called "gentleman's agreement" among the six nationalities, basically according to their contribution to the Community budget.²⁶⁵ The candidates then came mainly from government departments as well as other international organisations like the ECSC.²⁶⁶ The main characteristic about these early candidates was that they had to be "pro-European", something which had also been the case in the High Authority six years earlier. No particular skills were required apart from a linguistic one, and, as they so often were already civil servants from their own national administrations, the service was very often used as a means of furthering their careers at home. This, it has been argued, was so because of the lack of possibilities of advancement within the Commission.²⁶⁷ In line with these above mentioned arguments, the first Commission, under the leadership of Walter Hallstein, was to a large extent held

²⁶⁴ Article 144 of the Treaty of Rome: "[...] If the vote of censure is carried by a two-thirds majority of the votes cast, and representing a majority of the members of the Assembly, the members of the Commission shall collectively resign their office. They shall continue to carry out business until their replacement in accordance with the provisions of Article 158."

²⁶⁵ Coombes (1970) pp. 141-142.

²⁶⁶ The ECSC, and the High Authority in particular, did not, however, provide the Commission with as much staff as might have been thought. This was also in line with the policy of the Commission wanting to point out the fact that it was an entirely new body and not build too much on experience from other earlier organisations. Furthermore, there was no rush of people coming from the High Authority wishing to work for the European Commission. Views expressed by Emile Noël in conversation in Paris on 12 December 1994.

²⁶⁷ The lack of Community pensions and other welfare schemes at the time also played an important role here.

together by a common understanding and had little demand for any mechanical rules and regulations. There was also little stress on hierarchical lines of command or on departmental prerogatives.²⁶⁸ The most important values at this stage were energy, enthusiasm, and creativeness which made them all work for the common cause.

As has been briefly mentioned above, the organisation of the Commission reflected both political and bureaucratic characteristics. It performed a number of functions in the political system of the Community as well as being expected to act as a bureaucracy and to have the essential characteristics of an implementative, "goal-seeking" body.

David Coombes was one who wrote about, and tried to analyse, the functions of the European Commission. As he pointed out, one of the main functions of the Commission, the initiative function, required a degree of innovative activity which is not normally found in a bureaucracy. It involved initiating Community legislation as well as making recommendations on any matter it thought fitted within the framework of the Treaty. Further, it had a normative function as the "guardian of the Treaty" and the "conscience of the Community". These two functions were seen as interdependent and together they gave the Commission the role of a political leader and promoter of the Community interests. It was furthermore these functions that in many ways made the Commission differ from an inter-governmental organisation like the OEEC.

The Commission also had an administrative function of preparing for decisions, taking a number of regulatory decisions arising under Community legislation, and implementing existing policies and programmes. In this function, it has been said that the Commission had the choice between acting as an independent, uncommitted secretariat or as a zealous band of Europeans. Lastly, there was the Commission's function as a mediator in bringing about agreement between the member states in the Council of Ministers. In Coombes' view this was a function

²⁶⁸ This was soon to change, however, as the administration grew and became more bureaucratic in its working methods.

which is also normally to be found in the secretariat of such intergovernmental organisations as the GATT.

The four main functions of the Commission created certain strains within the organisation, between the normative and initiative, on the one hand, and the mediative and administrative, on the other. It was a situation which has been described as one between a political or promotive role and a bureaucratic or implementative one.²⁶⁹

5. THE PRACTICE OF "MINISTERIAL CABINETS" IN THE EUROPEAN COMMISSION: A THREAT TO SUPRANATIONALISM?

The politico-administrative system of the early ECSC, as well as that of the EEC, has been greatly influenced by the administrative, governmental system of France. There are several reasons explaining this. It was in France that the whole idea of a European Community took shape with Jean Monnet as a driving force. France was, at the time, the biggest, most powerful country among the Six, and the French were very active in this period. Although the whole idea initially was to be based on cooperation between France and Germany, and open to others which would like to join in, Germany was at the time in a less powerful position as to exert influence on the administrative side. The Germans were very much present, sharing their ideas and goals, but were also at the stage of rebuilding their own country after the Second World War. Germany came, however, to influence the EEC system at a later stage in the bureaucratisation process and building-up of a hierarchical system in the European administration, to the greatest extent due to the President of the European Commission, Walter Hallstein. In the very early days, though, one can detect in particular the presence of the French. Not only was this so for the establishment of the ECSC. When the first EEC Commission was set up in 1958, some influences from the ECSC's High Authority were carried along, although not

²⁶⁹ Coombes (1970) pp. 234-242.

as much as had been in the interest of the High Authority itself. One element that was transferred from the High Authority, however, was the French system of ministerial "cabinets". A similar system existed in other continental countries and their bureaucracies as well, but it was in the French political system that they were the most developed, and had existed the longest. Therefore, as a background to the discussion of "cabinets" in the EEC Commission, it will be necessary to look at how the system of ministerial "cabinets" works and has developed in France. Towards the end of this section there will be a discussion about whether the system of "cabinets" possibly can be said to be in conflict with the idea of supranationalism or with Article 157.2 of the Treaty of Rome stating: "In performance of their duties, (the Commissioners) shall not seek or accept instructions from any Government or other body. [...] Each Member State undertakes to respect this character and not to seek to influence the members of the Commission in the performance of their duties."

5.1 The historic development of "cabinets" - France

A ministerial "cabinet" is usually a small "informal" group²⁷⁰ of personal advisers attached to each minister in the Government. They are embedded in the French politico-administrative system and have played an important role in the shaping of its structure.²⁷¹

The system of "cabinets" can be traced back as far as the 15th century when they had advisers, or "*entourages*" of the "*grands officiers*" and Secretaries of State of the King. In the sense they are known today, they have been since the early 19th century, and the name "cabinet" seems to have appeared for the first time in 1822. Since then the essence of their role has been more or less the same, despite the changing of their environment. Both in the 19th century and today they have been acting as a channel for political favours, handling appointments for posts in the

²⁷⁰ The size of the cabinets has tended to grow somewhat bigger over the years. It is also subject to the importance of the Minister.

²⁷¹ Searls (1978) *The Fragmented French Executives. Ministerial Cabinets in the Fifth Republic*, p. 161.

administration, as well as transmitting the wishes of the minister to the administration, and ensuring that they were carried out. In this century they have developed as an indispensable channel for manipulating and liaising with the administration, giving advice on political and policy matters. They began to play an important role in shaping the relations between the minister and the administration as the relationship between these two became characterised by a widening gulf. In France, where political conditions have always been volatile, and ministers were in a particular need of reliable men in political circles, the cabinet's main function was to bridge the gap between the political and the administrative world. As Ella Searls has put it: "Their power bred new power and their growth stimulated further growth".²⁷² Once created they continued to exist, and, finding themselves in a convenient position, they took on new functions, surpassing their original *raison d'être*. The main roles of the "cabinets" have been to deal with political problems in areas directly or indirectly affecting the position of the minister or the Government. They were also to keep a close eye on political demonstrations, dealing with tax changes, and meeting the important pressure groups, all according to which ministry they belonged. As the administration grew and the role of the minister changed it also became the norm of the "cabinet" to become involved in administrative details. This last point was made under the pretext of giving information to the minister, and as a necessary consequence of its normal function of supervising the services over political matters. This situation of blurring and duplication of the functions between the "cabinet" and the administration has consequently led, in certain cases, to much ill-feeling between the two elements.

The Fifth Republic of France has seen the development of a relatively stable, executive-dominated regime which has placed the individual minister under the supervision, and, to a certain degree, close control, of the President of the Republic and of the Prime Minister, embedded in the Constitution. As a contrast to earlier regimes, the ministers also need a more continual contact with their colleagues in the government. This relative cohesiveness of the government has considerably increased

²⁷² Searls (1978) p. 162.

the power of the "cabinets" at the expense of the administration in the inter-ministerial bargaining. Most of the preliminary contact over political issues between the ministers now takes place at a "cabinet"-level.

The relationship between the minister and his "cabinet" could be both dynamic and dual. The Minister is, to some degree, formed by his "cabinet". Further, depending on the minister's personality, the "cabinet" may either reflect and magnify the qualities of the minister, or it may compensate for and complement it.²⁷³ As a qualification for entry into a "cabinet", loyalty to the minister and administrative competence has been seen as more important than personal politics. In the times before the Fifth Republic ministers in France traditionally stayed for very short periods and therefore needed the help of a personal staff to secure effective control of their departments. "Cabinet" members had to be both politically reliable as well as well versed in the techniques of administration. Up to the Third Republic most members of the "cabinets" were recruited among friends and acquaintances of the minister, or from people recommended to him. Still, today, the most important member of "cabinet" will mostly be personally chosen by the minister. The other members may, however, be chosen by the "chef du cabinet" or other leading members of the team. There has, thus, developed an increasingly formalised and hierarchical nature of the "cabinet"-system than ever before.²⁷⁴

As the "cabinet" essentially is a customary body, whose work has not been laid down in rules and regulations, this is one reason for its informal structure.²⁷⁵

²⁷³ Searls (1978) p. 167. With the Minister being "formed by his "cabinet"" is here understood in the sense of an influence going back and forth between the Minister and the "cabinet", both ways.

²⁷⁴ "Cabinets" usually have a maximum of ten members, except those of the Prime Minister and the Minister of Foreign Affairs, Finance and Interior, which tend to have more. The titles and ranks of the members of the cabinets are, in order of importance: *directeur*, *chef*, *chef-adjoint*, and *attaché*.

²⁷⁵ One "cabinet" rule, however, came in 1911, followed by a decision of the Conseil d'Etat, which held for the first time that "cabinet" members were to be civil servants. In the decade 1945-55, only one third of those appointed to ministerial "cabinets" did not come from the civil service.

Informal work with no binding regulations helps facilitate the communication and free flow of information within the team, a degree of flexibility lacking from the permanent administration. The informality of its structure also makes the "cabinet" able to constantly keep in touch with the demands of the minister's job and for the "cabinet" members to act as an antennae for the Minister. Over the years the "cabinets" have become more specialised, administrative and hierarchical, with a growth in the number of "cabinet" members. This is to a large extent the result of more stable governments in the Fifth Republic which has meant that each "cabinet" has existed over a longer period of time, leading to a specialisation of the functions of its members. The increasing bureaucratisation has to a certain degree undermined the effectiveness of the "cabinet" as a flexible group of political and policy advisers. Nevertheless, the "cabinets" have been one of the key holders of power and its members have functioned as focal points of decision-making in the French politico-administrative system.

In France the "cabinets" are considered as a part of any normal administrative practice. Nevertheless, as we will see, others might believe they "contribute to the reinforcement of the national enclaves within the institution" as well as being a "superfluous additional bureaucratic echelon in an administrative structure which is already much too cumbersome".²⁷⁶

5.2 The existence and importance of "cabinets" in the European Commission

As has been mentioned above, the system of ministerial "cabinets" has been more developed in France than in most other European country. It existed in Belgium since the 19th century, and in Italy after the Second World War, but to a lesser degree than in France where the "cabinets" have been an important part of the politico-administrative system for centuries. It was also generally assumed that the French model would be the most appropriate one in the EEC Commission as it had already been applied to the ECSC's High Authority. It was felt that a flexible system

²⁷⁶ Siotis (1964) p. 243.

of policy advice would be a great help for the Commissioners and a way of sustaining a dynamic element. The system was seen as having considerable advantages, assisting the Commissioners in the performance of their duties by keeping them informed of developments within and outside their allocated policy areas, and by liaising with other parts of the Commission as well as with outside institutions and interests. The first Commission of the EEC of 1958, thus, set up "cabinet" offices on the pattern of the French ministerial "cabinets". They were small personal groups of staff not part of the Commission's bureaucracy nor of the Directorates General (DGs). However, they came to play a crucial role in the internal political management and the external links of the Commission.

In the early years of the Commission there was a conflict over the size of the "cabinets". The President of the Commission, Walter Hallstein, who was brought up in the German system and not so familiar with "cabinets", preferred them to be small, stressing rather the importance of the administration itself. On the other hand, the French, as well as the Italians were of the opinion that the Commissioner's heavy work load necessitated larger "cabinets". That, according to Hallstein, would be a threat to good working relations between the Commissioners and their civil servants, as well as a force against the development of collectivism and Europeanism. Nevertheless, it was agreed to keep the Commissioner's "cabinets" consisting of two members plus a secretary and a typist. The "cabinet" of the President of the Commission would consist of an additional two members. The members of the "cabinets" have mostly been fellow nationals of the Commissioner, usually recruited from the national political parties or seconded from the domestic civil services.

The "cabinets" of the early Commission were smaller, as well as more innovative and policy oriented, than the French "cabinets" of the same period. Nevertheless, relations between the "cabinets" and other parts of the Commission became more formalised throughout the 1960s. They became the centre of a complex web of policy pressures, negotiations and package deals as well as an indispensable part of the policy-making process in the EEC. A reason why the system of "cabinets" was seen as a good element to adopt in the EEC system was that they

provided politicians, in this case the Commissioners, with a think-tank, and that they were flexible and unstructured. They were believed to be a "forum where ideas could be exchanged freely regardless of members' role or background". It was transformed to the early Commission where the "cabinet" members were a group of civil servants bound together by the same feeling of common purpose, "embarking on an adventure together".²⁷⁷

In a study made by David Coombes it was claimed that the early Commission was a highly creative, dynamic and committed organisation with a shared sense of identity and purpose. Much because of the still underdeveloped administrative structure, the scene was open for individuals to make their mark and give dynamic leadership. President Hallstein imposed a strong leadership on the Commission. With his political direction and impetus he set the tone for the work of the Commissioners and their "cabinets". A sense of collective European purpose that would foster a European identity within the member States was his goal.

The "cabinets" of the early Commission were flexible, wide-ranging with functions spreading through many areas of interests. They were, in general, organising the work of their Commissioners, and contact between the different "cabinets" was constant and informal. To facilitate such contact, there was once a week, shadowing the Wednesday meeting of the Commission, a "Meeting of the Heads of Cabinets" that could be instructed by the Commission to make preparations for its meetings.²⁷⁸ According to Emile Noël, however, this was a decision taken by the first President of the common Commission of the European Communities, Jean Rey, to set up the so-called "Weekly Meetings of the Heads of Cabinets". Before the Merger in 1967 such meetings only happened from time to time, a few

²⁷⁷ Interview with Richard Mayne. Ella Ritchie *The Model of French Ministerial Cabinets in the Early European Commission*. In: Yearbook of European Administration 1992, p. 100.

²⁷⁸ These meetings were given formal status by the Merger Treaty of 1967 after a decision by the Commission President Jean Rey. Yearbook of European Administrative History 1992, p. 100.

times a year, mainly to solve technical problems.²⁷⁹

The "cabinets" were active in the fields of policy advice and cooperation, liaison with the member States, as well as appointments and promotions of staff. Particularly with regard to the latter, the "Meeting of Heads of Cabinets" has been the venue where questions concerning personnel and administration have received preliminary, or even decisive, consideration. The system of the Commission was that each Commissioner was given one area of primary responsibility and, in addition, the subsidiary responsibility of two more. It was in this case put upon the "cabinet" to give policy advice in the two subsidiary fields in particular, and to ensure that the Commissioner was well briefed across a whole range of subjects. In doing so, it was essential for the "cabinets" to liaison with other "cabinets", in addition to COREPER, national civil servants and interest groups. By performing this task the "cabinets" came to perform a vital role in clearing the ground for a consensus on policy issues.

Throughout the 1960s the Commission developed a more institutionalised pattern of policy-making. Together with the developing bureaucratic culture and administrative practices within the DGs, it had an effect on the relationships between the "cabinets" and the administration that was not as flexible as before. There had been a certain amount of informal liaising between the "cabinets", and the services of the DGs, as well as with national civil servants and interest groups.²⁸⁰ However, an evolution of rules and regulations and an institutionalised pattern of policy-making led to much more formalised work with an increasing use of written procedure. With the *Règlement Intérieur*, Article 15, the existence of "cabinets" became institutionalised, stating that "the President and the members of the Commission may constitute cabinets whose duty will be to assist them in the accomplishment of their

²⁷⁹ View expressed by Emile Noël in conversation in Paris on 12 December 1994.

²⁸⁰ Yearbook of European Administrative History 1992, p. 103.

tasks".²⁸¹ The Directors General, however, did not have such an arrangement at their disposal. Nevertheless, they often had a "special assistant" or "assistant" which in practice could be transformed into a "miniature cabinet".²⁸²

The idea of supranationalism in the European integration means that the organisation and its institutions should be independent from the member States. This principle, although not including the word "supranational", is laid down in Article 157.2 of the Treaty of Rome stating that the Commissioners must "in the general interest of the Communities, be completely independent in the performance of their duties" and therefore "shall neither seek nor take instructions from any Government or from any other body". This must also be respected by the member States who must refrain themselves from trying to influence any member of the Commission in performing their duties.

The idea of the Commission was as a body autonomous from the member States, free to pursue the Community interests. In the early years it gained considerable prestige by the rapid and professional manner whereby it coordinated the process of implementation and by its skill in fulfilling the "broker" role in searching the agreement of, and settling the disputes among the member States' Governments. No doubt this was a fact much due to the role of the "cabinets". The "cabinet" members functioned as antennae for the Commissioners being in direct contact with the member States as well as with one another. The weekly meetings of the "*Chefs du cabinet*" have been considered as the Commission's most effective tool for managing the work of its departments. It is true that one of the first concerns of the EEC Commission was to confirm its independence vis-à-vis the member States. This might, to a large extent, be considered as successful. However, criticism has been made of the fact that the Commissioner and his "cabinet" usually have been of the same nationality and the "cabinet" therefore played an important role in the relations between the Commissioner and his home country, representing national

²⁸¹ Journal Officiel des Communautés Européennes, sixième année, No. 17, 31 January 1963.

²⁸² Siotis (1964) p. 243.

interests in the Commission's organisation. As the Commission is the institution representing the "Community as a whole", the thought of the "cabinet" system as actually working against the principles of the institution as a whole is therefore an interesting one which will have to be considered constantly.

Although the Commission was a "supranational" body, independent from the member States, it has all the time been important to gain the necessary national political support for its initiatives. Interest from the national governments and other bodies has tended to determine the success or failure of initiatives taken by the Commission. This became more and more clear throughout the 1960s when the Community institutions increasingly became subject to national pressure. In the role of the Commissioners trying to reconcile Community interests with the national ones, they gained considerable support from their "cabinets". However, the "cabinets" have also been under considerable pressure from national politicians to act in their interests. Whether this has been a real threat would, presumably, depend on the personality of the Commissioner, as well as the situation of the "cabinet" itself. A genuinely "European" Commissioner would probably know how to combine national pressures with his superior duties laid down in the Treaty. On the other hand, members of the "cabinets" might, after having served the Commission, want to go back to a career in their own country. In this case it could be of particular difficulty not to put extra weight on national considerations.

It must be stressed that a decline in supranationalism, or even a failure to follow the words of the Treaty, cannot be caused by the "cabinet" alone. Nevertheless, it could be seen as a possible element in this decline that has occurred in the Commission. It is a fact that there has been, since 1958, a shift towards a member States' domination in the execution of Community policies. On the other hand, it must be pointed out in this respect, the considerable amount of contact there has been at all times between the various "cabinets" and the weekly "Meeting of Chefs du Cabinet". This has made the "cabinets" aware of not only their own national interests, but those of the other member States as well. To say, therefore, that the "cabinets" have been a threat to supranationalism or to the execution of

Article 157.2 seems rather too strong. Another factor which seems more likely to have had an influence on this is directed not to the "cabinets", appointed by the Commissioner, but to the Commissioner himself and the personnel of the Commission. As the importance of the Commission increased and this became evident to the member States, the latter began to take an active interest in the appointment of the Commissioners as well as of the Commission personnel.

In the European Commission, as well as within the French Government, the system of "cabinets" has played an important part in gathering information and clearing the ground for a consensus on policy issues. Although not heavily regulated by rules and regulations, they have become an important element not likely to disappear. They perform their duties in loyalty to their Commissioner, influencing the relationship between the Commissioner and the administration. In the EEC they were representing the Commissioner's home country and have been seen as elements of national interests in the Commission. Considering the fact that the Commission was set up as an institution independent of member States with the task of "fostering a European identity", one might understand how the whole idea of "cabinets" in the Commission has been criticised from certain angles. That the creation of a European identity should have been encouraged by the "cabinets" seems somewhat unlikely. On the other hand, whether they have worked as a tool for the member States to put national pressure on the Community would, in any case, not be the sole reason for the Commission's decline of supranationalism.

6. CONCLUSION

The situation in Europe after the defeat of the EDC Treaty in 1954 seemed, for what was to be only a moment of the larger historical picture, less than favourable towards any further integration among the Six. With the "*relance européenne*" that followed it seemed beyond every doubt that, despite differing national interests, vital forces drew the countries together in an even more wide-ranging cooperation than before. The conditions behind this development, which have been discussed so far, are what has determined the outcome - the European Commission. Whether this has shown to be a convincing political leadership or a "mere" bureaucracy has depended on the conditions put before it, as well as the personalities given to its disposal.

As has been shown above, the Commission did reflect certain elements characteristic of a bureaucracy. However, it cannot be said to have been only that. In the very early years of its existence, what the members of the Commission had in common was simply the fact that they were considered to be "good Europeans". They had, in one way or the other, all been involved in the foundation of the Community, a situation rather unique for a "bureaucracy", which as well must be considered as small with only its nine members. The Commission, at this time, was expected to perform functions that were normally associated with the political leaders of a state in initiating policies for the common good, and setting and preserving norms of action. Further, the Commission was expected gradually to increase its powers and scope in economic matters at the expense of national governments so as to later act as a magnet for political forces in the member countries.

The Kennedy Round of the GATT negotiations was seen as a major achievement in European integration. However, nothing could have been achieved without the consent of the member governments. This was also what was often considered to be the major dilemma of the Commission. It could not perform all its functions sufficiently without a political leadership independent of national governments, at a Community level. This could not happen at a time when the

member States saw the Commission as nothing more than a "supranational" bureaucracy. Therefore, the Commission became increasingly to exercise purely delegated, administrative functions which related to its tendency of acquiring an increasingly bureaucratic organisation. Towards the end the Kennedy Round negotiations however, Coombes argued that the Commission as well as the individual Commissioners did exercise a certain amount of political leadership, which one might regard as the reason for its success.²⁸³

The place the European Commission has occupied in the Community institutional structure has been determined already from the Treaty of Rome. The role it has played within this structure, on the other hand, has depended on other external as well as internal factors, and has varied throughout its history. To claim, however, that an element like the "cabinets" has served the interest of the national governments does not seem accurate in a discussion about the early period of the Commission. This chapter has shown how the Commission has taken upon itself political leadership in the Kennedy Round negotiations, and it has shown how the personalities involved were enthusiastic about the European cause - one of the most important employment criteria of that time.

²⁸³ Coombes (1970) p. 197.

CHAPTER IV

THE INTERNAL ORGANISATION OF THE FIRST EUROPEAN COMMISSION OF 1958

*"Les hommes sont nécessaire au changement, les institutions pour faire vivre le
changement."*²⁸⁴

1. INTRODUCTION

The Messina Conference in June 1955 was what is generally acknowledged as the start of a process leading to the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). In Messina an intergovernmental committee, headed by the Belgian Foreign Minister Paul-Henri Spaak, was set up and the negotiations for the Treaties of Rome started, consisting of the six member States of the ECSC. The member governments asked for the assistance of the High Authority which was represented by Dirk Spierenburg. The purpose was to study the already three year long experience of the High Authority, in order to draw on some of its experiences for the future Communities. The High Authority published an official opinion on 7 November 1955 on the work of the Committee. This opinion expressed a great interest in the establishment of a general common market affecting all economical activities, alongside a "joint energy and transport infrastructure".²⁸⁵ We will see, however, that the interest shown by the High Authority towards the new European Commission was not going to be received quite in the same way by the latter.

²⁸⁴ "People are necessary to make changes, institutions are necessary for change to last." Own translation. Jean Monnet *Clefs pour l'Action*, Amis de Jean Monnet, L'Atelier Mérat Maquette Jean-Pierre Rosier, 1988, p. 18.

²⁸⁵ Spierenburg and Poidevin (1994) p. 340.

The first year, if not to say the first few months, of the European Commission being in operation, was full of new events and experiences. The governments and officials who were to set up the new Commission of the EEC were pioneers in many ways by taking up work in a completely new institution in a totally new Community. However, they did in some ways look to the High Authority of the ECSC for help and advice, although not as much as one might have thought as we shall see. In many ways the early Commission resembled much the organisation of the High Authority, although the administrative structures of the Commission were to become much more complex than those of the High Authority, based on both staff and line units.²⁸⁶ During the negotiations in 1956 on what were to become the Treaties of Rome, the movement towards a European unity was still reeling from the rejection of the European Defence Community in August 1954. Therefore, the High Authority was seen as the symbol of the "supranational" element of the ECSC and, as a consequence, the target of the critiques of "Europeanization". A more modest term, the Commission, was chosen out of political reasons.

During the negotiations for the ECSC Treaty, Jean Monnet had wanted the High Authority to consist of only five representatives. This would prove the supranational aspect where members would be selected on basis of qualifications and enthusiasm over the case of European integration, and not on nationality. In fact, not every member State would have had a member represented in the High Authority at the same time. With the opposition from the member governments, however, each member State had to be represented at all times, and the number chosen was nine. The same number was later chosen by the Commission.

On 1 January 1958 the EEC came into being after the Treaty of Rome had been signed on 25 March 1957 and ratified by all the parliaments of the six member States. Ten days later, on 10 January, the nine members of the Commission of the EEC were appointed by the member Governments, who had met in Paris on 6-7

²⁸⁶ When the High Authority reorganised its administration some years after the EEC Commission was set up, the latter was used as its model.

January, in accordance with Article 158 of the Treaty of Rome.²⁸⁷ These were men who all had in one way or other been involved in the European integration process, either in their own countries or at an intergovernmental level.

On 14 January 1958 the President of the new Commission, Walter Hallstein, held initial conversations with the Presidents of the ECSC, Paul Finet, and of Euratom, Louis Armand. These conversations were later agreed to be institutionalised. Two days later, in the Val-Duchesse castle in Brussels on 16 January, the Commission was formally constituted, and its members taking over the duties given solemnly to them according to Article 157 of the Treaty of Rome. This was a day to be remembered. Not because it was the first European executive body to be set up, as the High Authority of the ECSC already had existed for five years, but because it was the first European executive body that had as an objective the integration of the whole economic sector of the six member States. As was anticipated and hoped for by the founding fathers of the ECSC, as well as by the neofunctionalist theorists, European integration had taken a step forward and been extended into further areas of life.²⁸⁸

The Treaty of Rome had laid down most of the ground rules concerning the running of the Community and its institutions. However, the only thing the Treaty provided in detail about the Commission was the procedure for appointing its members, their condition of service, and the vote of censure which can be given on the activities of the Commission by the Assembly. Much of the organising of the Commission was therefore left for the members alone to decide. In this respect, the years 1958 and 1959 will be seen as years of trying out and judging the procedures and methods to be used in defining the policy that ought to follow the Community

²⁸⁷ European Economic Community - First General Report on the Activities of the Community 1958, p. 20. Article 158 EEC: "The members of the Commission shall be appointed by mutual agreement between the Governments of Member States." All Articles from the Treaty of Rome referred to in this thesis are taken from the original, unamended Treaty of Rome of 25 March 1957.

²⁸⁸ This process was seen at the time as a proof of the "spill-over" theory. See above, Chapter III. 2.1.

into the 1960s. Also, the trying out process was applied to the building up of the administration of the Commission. What its organisational structures ought to look like and how it should function was not defined in the Treaty of Rome, which on this matter only established the fact that Staff Regulations concerning its administrative staff should be set up in the future.²⁸⁹ Part of the problem was rooted in the fact that the Commission was a completely new and original invention. It was not a government in the supranational sense of the word, but it was much more than an intergovernmental body in the traditional sense.

The Commission's own administration was to be set up at a rapid speed during the first few months of 1958. The main idea of how the administration would succeed was seen in limiting its scope and giving it one high quality. The administration which was set up was to be different from traditional, national bureaucratic administrations. This new administration was, first and foremost, a political authority, and only administrative in certain measures. It was a difficult task and, as it was put by President Hallstein in his farewell address to the European Parliament on 21 June 1967: "The members of the Commission had to constitute a unified, independent, integral body. The Commissioners had to be one, bound together by the principle and practice of collegiality."²⁹⁰

The High Authority had, in 1951, been considered as a collective head of an independent administration, exercising "supranational" executive functions. According to Jean Siotis, however, this was not the case for the European Commission in 1957. The latter came to be considered as something more than a multilateral body, yet something less than an independent executive.²⁹¹ As a preliminary comment one could say that the High Authority was more executive,

²⁸⁹ Article 212 of the Treaty of Rome. In the original Treaty of 1958 the term "statute of service" is used also in the English version, but throughout the thesis, the term "Staff Regulations" will be used, which is also what has been used in later amended Treaty versions.

²⁹⁰ Hallstein (1972) *Europe in the Making*, p. 59.

²⁹¹ Siotis (1964) p. 247.

whereas the Commission showed signs of being more of a developmental body. In the High Authority, "supranationalism" had showed, after some time, not to be working, as it in practice always had to consult both the member State governments and the Council. The European Commission, Siotis claimed, would be considered as both a multilateral body as well as the top echelon of an independent administration assuming executive functions, according to the circumstances. In periods of political consensus it would appear as an independent entity, whereas in times of crisis its multilateral character would be accentuated. In Siotis' view the existence of national "enclaves" at all echelons of the administration, as well as within all administrative units, did not, however, seem to constitute an obstacle to the normal functioning of the institution as long as the consensus, which was the most important principle of the "Community" institutional theory, would remain a reality.²⁹²

The new thing about the Treaty of Rome lay in the structure of its executive body, the Commission, and the existing relationship between this European body and the Council of national ministers. In the ECSC there had been an essentially political wish from the negotiators of the Treaty of wanting to create a European Government. However, as they saw how the national governments had intervened in the activities of the High Authority, this had to be taken into consideration by the authors of the Treaty of Rome. Another difference between the High Authority and the Commission of the EEC was that the latter, in most cases, could not take independent decisions but was assigned to implement the decisions taken by the Council of Ministers. Its powers lay in the fact that the Council could not take any decisions without first having received a proposal from the Commission. To modify or reject such a proposal there had to be unanimity in the Council. This was further why the Commission was also, in some ways, considered as more "important" than the High Authority. It was on proposals from the Commission that the six governments were to take measures aiming at the establishment of the European Economic Community, as the Commission represented the interests of the

²⁹² Siotis (1964) p. 249.

Community as a whole, reaching much further than the High Authority and the ECSC. In a comparison with the national systems, the Commission bore similarities with a government in its right to propose laws, as well as in its capacity of taking political initiative.

The establishment of the EEC and its Commission was important in the sense that it was thought that the creation of common interests could lead to a further integration, which then would require the establishment of other common agencies; the so-called "spill-over" effect of the neofunctionalist theory.²⁹³ To achieve this effect, three conditions were necessary. First, there had to exist a common sovereignty, above that of the member States. Secondly, independent institutions had to be set up, and lastly, there had to be equality between the member States. The building up of the administrative structures of the Commission was in this respect seen as crucial to this development as it was to be independent of the member States with certain initiating powers of its own.

This chapter will discuss the organisational background of the first European Commission of 1958, and how it was set up. The background of the Commissioners will be considered, and what became their task in the Commission, as well as the selection of its staff. Further, an analyses of the functions of the Commission will be made, how the Commission worked in itself, as well as in cooperation with the other two European executives. This analysis will in particular involve the process of establishing a "*Statut de Service*", or "Staff Regulations".

As a definition of "executive", this can be either "a person or group responsible for the administration of a project, activity or business", or, as will be found more suitable for the European Commission, "a branch of government responsible for carrying out laws, decrees etc."²⁹⁴ Although the Commission was nothing like the executive branch of a government, it will be shown that they had

²⁹³ See chapter II, 2.1.

²⁹⁴ Collins English Dictionary.

certain characteristics, and certain functions in common. According to Jean Siotis' definition of "executive", it describes "the functions of a body acting independently within certain legislative limits and participating in the process leading to the adoption of the decisions or assuming itself the decision-making function".²⁹⁵ A discussion will follow later in this chapter on how the European Commission of 1958-59 fitted into these various definitions.²⁹⁶

As it was put by Walter Hallstein, the first President of the European Commission: "politics does not only consist of knowing, nor of wanting, but of acting".²⁹⁷ This is what has characterised the first years in existence of the European Commission.

2. THE COMMISSIONERS

2.1 The nomination of the Commissioners

Among the negotiators of the Treaty of the ECSC there were certain forces pulling in the direction of the High Authority as a collegiate, a truly homogeneous team of only three, or at the maximum five members. This way decisions could be taken rapidly and responsibilities clearly established. Only France and Germany supported this idea of supranationality, however, with the other member States demanding one representative from each State. As a compromise it was decided on nine, and this same pattern was as well chosen for the Commission of the EEC.

According to the Treaty of Rome, Article 157.1, the new European Commission had to consist of at least one representative from each member State and no more than two of the same nationality, with the total number of nine. There should be one president and, originally, two Vice-Presidents. The latter number was,

²⁹⁵ Siotis (1964) p. 227.

²⁹⁶ See below, 4. "Functions and Features of the Commission".

²⁹⁷ Declaration by Walter Hallstein, President of the Commission of the EEC, to the European Parliamentary Assembly in Strasbourg, 21 October 1958.

however, changed to three from the very beginning by the member governments in a tacit and unofficial attempt to achieve a geographical and political equilibrium.²⁹⁸ With this means that the agreement was never written down anywhere and, among the nine Commissioners it was not a matter that had to be discussed but seemed rather obvious at the time. Article 161 of the Treaty states nevertheless: "The President and the two Vice-Presidents. [...]", and this was not changed until the Merger Treaty when the number of Commissioners was changed anyway.²⁹⁹ The members were to be nominated for two years by a common agreement of the six governments and in consultation with the Commission.

The Schuman Declaration of 9 May 1950 summoned an "[A]uthority with no ties or obligations to the States". Therefore, discussions arouse on how to elect or nominate the members of the High Authority in a way that would not call on the member States. A French working paper suggested that *"la nomination de ses membres (...) soit assurée en commun par les Gouvernements sans qu'aucun membre reçoive son mandat directement d'un Gouvernement particulier"*.³⁰⁰ According to Jean Monnet, the members of the High Authority were common representatives, independent of government considerations and private interests. Further, the nomination of the members was done unanimously during the transitional period. Later, it was to be done by a five sixths majority. Under the Treaty of Rome the established majority agreement was abandoned in favour of unanimity.

Robert Schuman proposed a system of how to reduce the monopoly of the governments over the composition of the High Authority, which would be through the co-option of members. During the course of the transition period one single

²⁹⁸ Lemaigen (1964) *L'Europe au Berceau. Souvenirs d'un technocrate*, p. 26-27.

²⁹⁹ In the Merger Treaty of 8 April 1965 the number of Vice-Presidents was changed to five.

³⁰⁰ Condorelli Braun (1972) *Commissaires et Juges dans les Communautés Européennes*, p. 13. Own translation. "the nomination of its members [...] would be assured in common by the governments without any member receiving his mandate from any government in particular."

member would be coopted. Later, as Nicole Condorelli Braun has put it, this should be increased to one out of two so as to balance up the governmental nominations. In the Treaty of the ECSC, the system of co-option was one of its originalities, or one of its supranational elements.³⁰¹ The President of the High Authority, Piero Malvestiti, said during a European Parliamentary Debate on 20 October 1961 that: *"La cooptation offre de nombreux avantages politiques: pour les gouvernements elle ne représente pas un saut dans l'inconnu; pour l'exécutif elle offre la possibilité de compléter le collège unique au gré de ses vues communautaires."*³⁰² Nevertheless, as the system did not fulfill the hopes of the negotiators, it was not adopted for the Treaties of Rome.

2.2 The first President of the European Commission, Walter Hallstein

On 16 January 1958 the Commissioners of the very first European Commission were instituted at Val Duchesse in Brussels with these words:

*"Je jure, dans l'accomplissement de mes devoirs, de ne solliciter ni d'accepter d'instructions d'aucun Gouvernement ni d'aucun organisme, et de m'abstenir de tout acte incompatible avec le caractère de mes fonctions..."*³⁰³

It was a day dominated by two strong sentiments, as recounted by Robert Lemaigen: "(...) the astonishment of finding myself all of a sudden in front of a task as heavy and as exalting, and the concern for raising myself to its level."³⁰⁴

³⁰¹ Condorelli Braun (1972) pp. 14-15. *"Ensuite un membre sur deux le serait de manière à équilibrer les nominations gouvernementales."*

³⁰² Assemblée Parlementaire Européenne. Débats. Session d'octobre 1961. Séance du 20 octobre 1961.

³⁰³ Lemaigen (1964) p. 15. "I swear, in the fulfillment of my duties, not to seek nor accept any instructions from any government or any institution, and to refrain from all actions which are incompatible with the character of my functions." Own translation.

³⁰⁴ *"l'étonnement de me trouver subitement en face d'une tâche si lourde et si exaltante, et le souci de me hausser à son niveau."* Own translation. Lemaigen (1964) p. 16.

The President of this new Commission came from Germany. His name was Walter Hallstein and he was a professor of law, as well as a diplomat and a former Secretary of State for Foreign Affairs (1951-57). An intellectual and a Christian Democrat (CDU), he was capable of expressing himself perfectly and elegantly in French, English and Italian as well as German. Despite the difficulties Germany faced after the war, he was able to achieve international respect for himself and his country in a relatively short period of time due to the use of careful diplomacy. In company with such names as Antoine Pinay and Paul-Henri Spaak, he was sent by Adenauer as the German government's representative at the Messina Conference in his position as Secretary of State.³⁰⁵ A few years earlier he had been the leader of the German delegation during the negotiations for the ECSC Treaty.³⁰⁶ Hallstein was in many ways regarded as the disciple of the German Chancellor Konrad Adenauer by whom he enjoyed the total confidence,³⁰⁷ and was chosen as an advisor on his European policies.³⁰⁸ Hallstein was the Secretary of State in the Foreign Office under Adenauer between 1951, when it was formally created, and 1955.³⁰⁹ During this period one could even say that Hallstein "operated as a quasi-

³⁰⁵ Interesting here is the fact that the other five countries sent their Head of State and Foreign Minister, and for Germany Walter Hallstein was the one chosen to go together with Chancellor Adenauer, despite his official title being Secretary of State.

³⁰⁶ As a characteristic of Chancellor Adenauer, as well as of Hallstein himself, the latter once said in an interview with Terence Prittie: "Adenauer loathed wasting time. He made his decisions quickly - in my case for instance, he talked to me about the Schuman Plan and three days later asked me to lead the German Delegation." Prittie (1972) p. 220. That Hallstein accepted would indicate that they were equally interested in getting the job done.

³⁰⁷ Walter Hallstein was considered as "precise, pernickety, sometimes garrulous". Prittie (1972) p. 216. He was also the most convinced "European" in Adenauer's entourage, with tremendous faith in the ideal of a political as well as an economic union.

³⁰⁸ Konrad Adenauer was the leader of the Christian Democratic Party (CDU) from mid-1948, and was elected the first Chancellor of the new Federal Republic of Germany on 15 September 1949, a position in which he stayed until he retired in 1963 at the age of 87.

³⁰⁹ After the Second World War the Allied High Commissioners were in charge of the external relations of the new Federal Republic of Germany. In September 1950 it was suggested by the Western Foreign Ministers that the Federal Republic

Foreign Minister", despite the fact that he sat as an unelected representative of a Foreign Ministry that was not yet independent from the Allied forces.³¹⁰ Although it was Adenauer who was the formal bearer of the title of Foreign Minister, one could even go as far as to say that it was Hallstein who built up the German Foreign Ministry, in the same way as he would do with the European Commission a few years later.³¹¹ Both Adenauer and Hallstein worked eagerly for a complete reintegration of Germany in the concert of the European nations, and the elimination of all types of discrimination.³¹² Hallstein was also seen as the "pope" in his relations with the "emperor" Charles de Gaulle, where Hallstein would be the one defending the Treaty and the Community spirit, and de Gaulle the most powerful Head of State in the Community.³¹³ The appointment of Walter Hallstein satisfied

soon should have its own Foreign Minister. Thus, on 6 March 1951 the High Commissioners revised the Occupation Statute with the most important provision being that the Federal Republic should be in charge of its own external relations. Adenauer accordingly was appointed Foreign Minister, in addition to being Chancellor, on 15 March 1951. At the time, however, this was not an elected position. On the other hand, nomination of German ministers has been the responsibility of the chancellery and not the Bundestag.

³¹⁰ Padget (ed.) (1994) *Adenauer to Kohl. The Development of the German Chancellorship*, p. 130.

³¹¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³¹² Already in 1919, after becoming Mayor of Cologne, did Adenauer mention his hopes for a united Europe. In a speech he made at Cologne University, he said: "[...] German civilization and the civilization of the Western democracies will meet during the decades to come. Unless a genuine reconciliation is possible between them, unless the European nations learn to recognise and cultivate that which is common to all European civilizations [...] unless it becomes possible once more to unite the nations through cultural understanding, unless in this way we shall be able to prevent a new war among the nations of Europe, European leadership will be lost forever." Prittie (1972) p. 171.

³¹³ Pierre Gerbet (1983) *La Construction de L'Europe* (Paris: Imprimerie Nationale) p. 319. The relationship between General de Gaulle and Adenauer was not always an easy one. As de Gaulle had been a prisoner of war in Germany during the First World War, he had little reason to like the Germans very much. During the Second World War he had been the leader of the Free French, determined to defeat Germany. In Adenauer's eyes he did not appear to be a "good European", having opposed the idea of the EDC, and being lukewarm towards the burgeoning European Common Market.

the opponents of the Commission adopting a purely economic approach. With Hallstein as President the Commission would also take upon itself a political and institutional side as he found the political matters to be of primary importance. As we have seen, he was in favour of the Commissioners having smaller cabinets consisting of only two members, one secretary and a typist. The reason was his fear of the development of nationalism within the cabinets, which would put the collegiality and the Community spirit of the Commission at risk. From the moment he was appointed as President of the Commission he immediately assumed a clear leadership which was neither disputed by the other members of the Commission, nor so much by the member States. He became a natural leader of the managing and development of the Commission, as well as in charge of all main decisions.³¹⁴ Referring to the independence of the European Commission from the national governments, it has been said that as Adenauer asked Hallstein, on assuming the role as President of the Commission, to "continue his goodwill toward the Federal Chancellor", Hallstein supposedly replied: "Chancellor, I learnt from you how to deal with those who represent the constituent parts of the state, the Länder."³¹⁵ This quote should illustrate with what earnestness and consistency, as well as strict obedience to the Community treaties he assumed his new role. As he also played a major role in the process of all main appointments of the first few years, he largely came to decide the size of the Commission administration.³¹⁶ Walter Hallstein served as the President of the EEC Commission until the Merger of the Executives in 1967.

³¹⁴ Comparisons are often made between the Presidency of Walter Hallstein (1958-1967) and that of Jacques Delors (1985-1995) who both executed a strong leadership role, resulting in presidencies of evolution of progress.

³¹⁵ Bond, Smith and Wallace (1996) p. 114.

³¹⁶ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

2.3 The members of the first European Commission

One of the three Vice-Presidents was Sicco Mansholt from the Netherlands. He served as Vice-President from 1958 until 1967, and later as Vice-President of the single Commission of the European Communities after the Merger in 1967. He had earlier been a Socialist Minister of Agriculture and Fisheries (1945-58). Already in 1950 had he proposed to the OEEC the establishment of a sovereign European body to bring down customs barriers and to fix the prices of agricultural products. As he expressed it in a conversation with Janine Delaunay:

*"Dans des années 1951, 1952, j'ai commencé à m'initier aux relations internationales, à la politique agricole européenne. Après 1952, j'ai entrepris un effort plus systématique pour arriver non pas à un traité agricole, mais à un programme des règles communes pour l'importation et l'exportation des produits agricoles dans les pays, adhérents à la communauté du charbon et de l'acier. C'était le premier plan agricole européen."*³¹⁷

What he here referred to was the so-called "Green Pool" which was attempted set up under the framework of the OEEC.³¹⁸ He had also had the wish to become the very first President of the European Commission. However, when the German Chancellor Konrad Adenauer heard about him, it seemed unthinkable to have a President of the Commission who was both a socialist and a farmer. Nevertheless, as Vice-President and Commissioner for Agriculture he was more than accepted, and in 1972 he was chosen as the President of the common Commission of the European Communities. His name is also linked to the battle for a political union by means of economic and social policies.

The other Vice-President was a Frenchman, Robert Marjolin, who held his

³¹⁷ Mansholt (1974) *La Crise*, p. 46.

³¹⁸ The "Green Pool" negotiations took place within the framework of the OEEC at the beginning of the 1950s. Later, several of the ideas launched during these negotiations were picked up again by Sicco Mansholt during the preparations for a Common Agricultural Policy, from 1958 onwards. View expressed in conversation with M. Emile Noël in Paris on 12 December 1994.

position between 1958 and 1967.³¹⁹ During 1945 and 1946 he worked with Jean Monnet in the recovery plan of France. Further, he was the former Secretary General of the OEEC (1948-55), where he was involved in managing the Marshall Plan. Later, he served as the Head of the French delegation at official level to the negotiations of the Treaties of Rome, under the authority of the French Foreign Minister, Christian Pineau, and of Maurice Faure.³²⁰ He was also a professor of Law and Economic Science and a member of the Socialist party since 1929. He was respected as an administrator and had even been one of the suggestions to replace Jean Monnet as President of the High Authority.

The third in the group of Vice-Presidents was Piero Malvestiti from Italy. He had been a Deputy Under-Secretary in various ministries (1946-58), as well as being a philosopher and an economist, representing the Christian Democratic Party. He also played an important part in the Italian resistance during the Second World War. On 15 September 1959 he resigned from the Commission in order to replace Paul Finet as President of the High Authority of the ECSC, where he stayed until 1963. He was replaced in the Commission by Giuseppe Caron, former Under-Secretary of State in the Italian government.

The political equilibrium mentioned above which was created by appointing three, instead of two Vice-Presidents, was made up by President Hallstein and Piero Malvestiti representing the Christian Democratic parties of their countries, and on the other hand, Sicco Mansholt and Robert Marjolin being both Socialists. It was thought, although their political affiliations were not supposed to matter, that this

³¹⁹ Emile Noël has pointed out the fact that the group of three Vice-Presidents was not divided according to any rank, apart from possibly the element of age. The order they appear in this text is therefore not according to rank, and solely the responsibility of the author.

³²⁰ Maurice Faure was the Secretary General of the Radical Socialist Party and a member of the French Assemblée Nationale. In February 1956 he was appointed as Secretary of State for Foreign Affairs in the Guy Mollet Government. Under the Foreign Minister, Christian Pineau, he was the main French negotiator for the Treaties of Rome at political level. In 1956 he also negotiated with Walter Hallstein about the Saar.

would be a better arrangement among the group of president/vice-presidents. Sicco Mansholt and Piero Malvestiti were both reputable party politicians in their own countries. Robert Marjolin was a respected political official, and Walter Hallstein represented both the category of a respected academic as well as a higher political official. Another reason for having three Vice-Presidents was that there would be one representative from all the three "big" countries, and one representing the Benelux countries. However, not much has been written about this in the literature. It seems to be a decision that was taken in complete unanimity because it was felt necessary and therefore did not need too much discussion. According to the Executive Secretary at the time, Emile Noël, this decision did not make much of a difference for the running of the Commission either. The Vice-Presidents did not execute any particular powers and had no other duties than the ordinary members. The only difference, although important to the person concerned, was a 10% higher salary.³²¹

The other six were so-called members of the Commission.³²² One was Giuseppe Petrilli from Italy. He was a specialist in economics, finance and social insurance, and a Christian Democrat. He was a member of the Commission until October 1960.³²³ The second member from Germany was Hans von der Groeben. He was a civil servant and a former member of the Spaak Committee, as well as of the Coordinating Commission of the ECSC Council of Ministers (COCOR). Later he became one of the negotiators of the Treaty of Rome for Germany. He was a member of the EEC Commission until 1967, and of the joint Commission until 1970. In the two Commissions he worked tirelessly for the creation of the Community competition policy. His political affiliations, however, were never known at the time, although after having left the Commission, he became a member of the CDU. The

³²¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³²² According to Robert Lemaigren, critics of the creation of the European Community and of the Commission spoke of the division between President - Vice-Presidents - members as being inspired by the South-American Armies consisting of one General, three Colonels and five simple soldiers. Lemaigren (1964) p. 27.

³²³ Condorelli Braun (1972) p. 225.

second member from France was Robert Lemaigen, a businessman and Vice-President of the International Relations Committee of CNPF (Conseil National du Patronat Français). He was independent of any party affiliations, and he left the Commission in January 1962. Robert Marjolin had been the one obvious candidate to the European Commission from France, and Prime Minister Antoine Pinay was nominated as the second candidate. However, he refused as a matter of principle as he felt the country had too many problems with the Fourth Republic falling to pieces and his place would therefore have to be where he was.³²⁴ Although Pinay refused the position himself he had at first strong wishes for the candidate to be one of his political friends. However, as this failed, a non-political figure was suggested. The candidature of Robert Lemaigen was put forward with the idea of being a business interest group official in the Commission, with intimate knowledge of the CNPF and the unions. The fact that he was chosen was, further, considered as a sign of willingness from the Government's side to assure the goodwill of the employers who were still rather critical towards European integration.

The Belgian member was Jean Rey. He was a lawyer and a former Liberal Minister of Economic Affairs. At the age of 34, in 1939, he was elected to the "*Chambre des Représentants*" for the first time, where he stayed until 1958, representing his home town of Liège. In 1949 he made his debut in the Government as Minister of Reconstruction, and later he became the Minister of Economic Affairs (1954-58), the latter also involving him in the negotiations of the Treaty of Rome. He had already taken up seat in the Council of Ministers of the ECSC where he held the presidency three times and became deeply involved in the running of the Coal and Steel Community. He offered a moral authority and a patriotism which had put him two years in a concentration camp during the Second World War. With a perfect knowledge of four languages as well as being a good orator with an amazing working power made him well prepared for the difficult tasks in the European

³²⁴ The Fourth Republic fell on 14 May 1958. In June the same year General Charles de Gaulle was appointed as Prime Minister of France, and on 4 October the new Constitution of the Fifth Republic was accepted in a referendum. In 1959 de Gaulle was elected President of the French Republic, a position which he held until 1969.

Commission. By being a Protestant he represented a minority in Belgium of only 2% at the time. From 6 July 1967, when the three executives of the European Communities merged, he was appointed President of the Commission of the European Communities. Before 1967, Germany, France and Italy held the presidencies of one Community each³²⁵. After the merger, however, it was necessary with a rotation in favour of one of the smaller countries and Jean Rey from Belgium was chosen. At this time Jean Rey had just had great success in terminating the Kennedy Round of the GATT negotiations as the Commission representative being the Commissioner for External Relations. After he left the European Community he served at the European College in Bruges as the President of the Council of Administration, as well as being a member of the "*Chambre des Représentants de l'Europe Unie*". In his view the spirit of the Community, if not to say its profound ideology, was Democracy. "Democracy is everywhere in our treaty. Democracy is the spiritual basis of the community of our different countries."³²⁶ According to Rey the word "Community" had two meanings. One would be the spiritual one and the other the institutional one. The spiritual meaning, he said, was a common faith and a profound ideal which made people stick together.

From Luxembourg came Michel Rasquin. He was a journalist and a former Socialist Minister of Economic Affairs (1951-58), and he had been in the Council of Ministers of the ECSC. His career in the Commission became short, however, with his death in June 1958.³²⁷ Lambert Schaus was a lawyer, a diplomat and a politician. He was a former Minister of Economic Affairs and Army, representing the Christian Democratic Party, and was appointed to take over the membership post

³²⁵ The President of the EEC, Walter Hallstein, came from Germany and the President of Euratom, Louis Armand, from France. The latter resigned from his position in June 1958 due to health reasons, and was replaced by another Frenchman, Etienne Hirsch. Italy had the presidency of ECSC from 1959 with Piero Malvestiti (1959-1963) and Dino Del Bo (1963-1967).

³²⁶ Fenaux (1972) p. 127. "*La démocratie est partout dans notre traité. La démocratie est la base spirituelle de la Communauté de nos différents pays.*" Own translation.

³²⁷ Michel Rasquin was obliged to leave the Commission already at the end of March 1958 due to his illness.

for Luxembourg. He had taken part in the Spaak Committee and had also been the head of the Luxembourg delegation during the Treaty of Rome negotiations, as well as in the Interim Committee. When the EEC was set up he served as a Permanent Representative with the Communities until the death of Michel Rasquin. He was appointed as a Commissioner on 18 June 1958 and retired in 1967 when he was appointed as Ambassador of Luxembourg in Belgium.

In the group of the original nine Commissioners one can find a pattern of three groups. One group would be of reputable party politicians in which were Sicco Mansholt, Jean Rey and Piero Malvestiti. Robert Marjolin, Hans von der Groeben, Lambert Schaus and Giuseppe Petrilli all belonged to the group of political officials, whereas Robert Lemaignan was the economist. President Walter Hallstein would represent a group of his own as he was not only the president, but also an academic and a political official.

The appointment of Walter Hallstein, one of Germany's most senior officials at the time, as president was, in fact, seen as a political decision. This was particularly true regarding the fact that his political line had been made known through a number of speeches and political actions. However, what was stressed by the Commissioners themselves, many of whom were also high officials in their countries, was the political importance of their task as opposed to being purely bureaucrats in a European Administration.

Later members of the European Commission under President Hallstein's leadership were Lionello Levi-Sandri from Italy who succeeded Giuseppe Petrilli in February 1961, and became Vice-President in 1964. He was an Administrator, professor and municipal councillor from the Social Democratic Party. Further, there was Giuseppe Caron, another Italian, industrialist, senator and junior minister from the Christian Democratic Party. He stayed in the Commission until May 1963, serving as Vice-President from December 1959. Before that he served in the Common Assembly of the ECSC between 1954 and 1958. Lastly, from France, came Henri Rochereau who was an exporter, senator (1946-59), and former Minister of

Agriculture (1959-61), from the centre-right Independent Republican Party (RI).

In the European Commission during the presidency of Walter Hallstein, which lasted from 1958 until 1967, there served altogether 14 Commissioners. Only five of these had experience as fully fledged national ministers, while President Hallstein had been Secretary of State in the German Foreign Office. Commissioner Caron had been Italian junior minister and deputy. The remaining seven were all civil servants, academics or "technicians". Five of them came from the Christian Democratic parties of their countries. Three were Socialists, one was a Liberal, one a Social Democrat, another was an Independent Republican and, for the remaining three, their political affiliations were unknown. Although nothing was written on this matter, and no official agreement had been made, it became an established pattern that the Benelux countries should have three Commissioners between them, one Socialist, one Liberal and one Christian Democrat. The countries with two Commissioners, France, Germany and Italy, should not provide them from the same political party. There was a conscious attempt to create a political balance in the choice of members, as well as a deliberate effort to avoid the appointment of any strong party men.

All of the members of the European Commission set up in 1958 were highly respectable people. They all had a mixture of administrative and political experience from their countries in the past, but there were no political leaders among them. A large number of the early Commission members had also taken part in the negotiations relating to European affairs and the Treaties setting-up the European Communities. This made them convinced, through their practical experience and personal commitment, about the need for European integration as well as in real contact with European affairs.³²⁸ Not only was this a unique situation which could only be characteristic of the early history of the European Commission. Together with other external factors, this might also have been the reason for its early success and fast progress. Later on, when the Commissioners became more distant from the

³²⁸ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

treaties, the picture would change. Among the group of original Commissioners six stayed for the whole period the European Commission operated as a single Commission. Of these, three stayed to serve the Single Commission after the Merger of the Executives, of whom two served time as presidents.³²⁹

2.4 Appointments of Commissioners and Officials

According to Article 7 of the Staff Regulations³³⁰ nationality should not be taken into account when appointing officials to the Commission administration: "The appointing authority shall, acting solely in the interest of the service and without regard to nationality, [...]"³³¹ These Regulations did not come into force until 1 January 1962. Nevertheless, the sort of gentleman's agreement implied about the appointment according to nationalities was still applied and placed a certain responsibility on the Selection Board to maintain a rough national balance. Each country's contribution to the Community budget also came into consideration here. It was felt that a fair balance between the nationalities of the member States had to be kept so as not to create bad feelings between them. This was not, however, meant as any kind of nationalism. It was built on the idea that all members, in this case nation states, should have equally many representatives measured according to their populations. It would have been impossible to create an executive supranational body where national quotas would not be necessary or even wanted.

Lists of potential candidates were drawn up for each nationality by the

³²⁹ Walter Hallstein (President 1958-67), Sicco Mansholt (Vice-President 1958-67, Vice-President 1967-70, President March 1972 - January 1973), Robert Marjolin (1958-67), Hans von der Groeben (1958-67, 1967-70), Jean Rey (1958-67, President 1967-70), Lambert Schaus (1958-67).

³³⁰ The Staff Regulations came into force on 1 January 1962 and will be discussed under point 6. "The setting up of internal administrative structures and the creation of a *"Statut de Service"* for the Commission.

³³¹ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. The Official Journal of the European Communities, 14.6.62, 1385/62.

Commissioner(s) concerned, with the help of close personal and political friends and assistants, and by others in the national administrations and elsewhere closely involved in negotiating the Treaty of Rome. Candidates came mainly from government departments and other international institutions, but also from business, industry, universities and other professional occupations. What they all had in common, and their only criteria, was that they were all "pro-Europeans". Before the Staff Regulations came into force, recruitment of higher officials came mainly from the outside, as mentioned above. After 1962, moreover, promotion or transfer came to a large extent from within, or was done by internal competition.³³²

As mentioned above, the principal characteristic the members of the first Commission had in common, and their main criteria for being selected, was that they were all considered as "good Europeans", as well as being highly qualified men in other ways. They had all previously been involved in various ways with the foundation of the Community and had great ambitions for the creation of a Federal Europe. In the early days, before the Staff Regulations of 1962, secondment of civil servants was the only way they could serve with the Commission without losing their rights associated with work in the national administrations. Therefore, the ones serving with the Commission in the beginning were all committed to the cause of European integration. Secondment was also considered, in particular by the French, as a way of Europeanizing the national civil services by letting as many as possible serve with the Commission for a while, and then return to their home countries.³³³

³³² Coombes (1970) p. 141-142.

³³³ According to Emile Noël, however, secondment from the French administration was not as significant as some have argued. It was only possible for administrative tasks and, although it was possible to give secondment for a long time, it was not so easy to come back to the French administration. Some years, it seems, was all right, but for a longer period, it could be difficult to obtain a position of the same sort of importance within the national administration. Therefore, secondments were usually preferred to be short, which would as well strengthen the Europeanization of the French administration more. Those who stayed in the Commission for longer periods would normally stay in Brussels, building a career as a European official, as they were usually the most convinced "Europeans" from the start. View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

In connection with secondment from the French administration it should also be mentioned the fact that the Government under General de Gaulle was rather reluctant towards the European administration and that the officials who came from the French administration therefore tended to have a stronger personal commitment than those recruited as purely technicians.³³⁴

As has been mentioned above, the Commissioners were appointed by the representatives of their member States in Paris on 6-7 January, and took up their duties officially on 16 January. The Commissioners had, however, held meetings before, in an old hotel in Luxembourg. At this time only the nine Commissioners and the Executive Secretary were present. The idea was then that "*il faut faire Europe*".³³⁵ All they had at the time was a few files, the treaties and great ideas, not even paper and pens. In the beginning the nine both lived and worked together. They had no staff yet, nor secretaries, but what they had was great confidence and lots of optimism for the new future.

Hallstein preferred meetings to be held in small, intimate rooms, reducing to a minimum the number of collaborators to accompany the meetings. He preferred the nine Commissioners to meet alone on the basis of psychological reason, believing it would create the necessary amicable team spirit. Efficiency, he believed, depended on an affectionate and total confidence between the nine, which would create a "family feeling" and the "total" independence which the Commission needed in particular in the beginning.³³⁶ By this he made sure that in the early days of the Commission a real teamwork and a real team spirit existed between the members, which was due to a genuine effort by President Hallstein in the attempt of reaching common decisions.³³⁷

³³⁴ View expressed by Emile Noël in conversation in Paris on 12 December 1994.

³³⁵ "We must create Europe." Own translation. Mansholt (1974) p. 86.

³³⁶ Mansholt (1974) p. 86.

³³⁷ View expressed by M. Emile Noël in a conversation in Paris on 12 December 1994.

3. EUROPEAN COMMISSION STRUCTURES

The European Commission started the building of its organisation from the top down. The setting-up of the administration was done almost without written texts, through "tête-à-tête" conversations, as well as in plenary meetings, without plan, changing points of view and progressively adopting one position after the other. It made arrangements for work to be divided up within the Commission itself, before it would decide on the occupants of most of the senior administrative posts like the heads of the departments of the administration. Later would come the interdepartmental planning and other staffing questions. Although the Commission appeared to be quite a "heavy" administration, there was no attempt of setting-up the whole administration at one time in the very beginning. This was something that had to come as time went by and the needs for how the administration ought to look like would become more clear. As Jean Rey put it:

"Souvent, nous, les commissaires, suggérons des méthodes administratives que nous connaissons bien dans notre pays - et qui nous semblent par conséquent naturelles et normales - alors que nos collègues s'étonnent ou s'esclaffent, en se disant qu'on n'a jamais entendu parler d'idées aussi originales." ³³⁸

The dominant characteristic of the administrative structures of the Commission was, nevertheless, its formal resemblance to that of national administrations divided into ministerial departments. In this respect the Commission was divided into Directorates General (DGs) which received their instructions from the individual Commissioners responsible for the various fields of activities, or Portfolios as they were called.

³³⁸ Cassese and della Cananea. *The Commission of the European Economic Community: the Administrative Ramifications of its Political Development (1957-1967)*. In: Yearbook of European Administrative History 1992, p. 84. "Often, we the Commissioners, suggested administrative methods which we knew well from our own countries, and that seemed consequently quite normal - whereas our colleagues would be amazed or even burst out laughing, saying they had never heard of such strange ideas." Own translation.

3.1 Portfolios

One would have thought that the European Commission would have looked towards the High Authority of the ECSC and organised itself accordingly, as the former was the only similar body existing. Nevertheless, it was more or less the opposite that happened, and the system of Groups in the High Authority worked in a very different way from that of Portfolios in the Commission.³³⁹ From the beginning eight different Portfolios were set up, and one for administrative matters. To facilitate cooperation between the Commissioners, and following the principle of collegiality, each area consisted of a group of three to four Commissioners.³⁴⁰ One presided the work, acting as the president of the group, and exercising a particular responsibility in the area. The other two or three were ordinary members. According to former Executive Secretary Emile Noël, however, these groups more or less disappeared after only a few months, or appeared only occasionally, and existed mainly as a means to choose officials and appoint staff. Although they did exist, most of them had a limited, or sometimes fictional role.³⁴¹ At the head of each DG there was a Director General. The DGs were further "divided into Directorates" with three to four Directors, "and sub- divided into Divisions"³⁴², with three to four Heads of Division.

By the end of March 1958 the broad lines of the organisation of the Commission was more or less completed. A year later, on 7 March 1959, the Commission had set up definitions and descriptions of the work of the higher civil

³³⁹ At the time when an administrative reorganisation of the High Authority seemed inevitable its President Piero Malvestiti (1959-63) came up with the "idea of adopting the organizational structure of the EEC". Spierenburg and Poidevin (1994) p. 479.

³⁴⁰ Coombes (1970) p. 124.

³⁴¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³⁴² Coombes (1970) p. 124.

servants of Category A.³⁴³ The Directors General, as well as the Executive Secretary Emile Noël, were all formally appointed on the same day, at a Commission meeting on the 23-24 March, after a long meeting between the Commissioners and President Hallstein. The initial proposals had been presented by the responsible Commissioner assisted by his two assessors.

During the first few months of 1958 there was a conscious attempt within the Commission to establish an administration with structures as easy and straightforward as possible. To achieve this it had been necessary to keep the number of big administrative units at a minimum. The notion of having a "light" administration had been inherited from the High Authority. As its President, Jean Monnet had refrained himself from creating an administration that would be too big for the members to have a complete picture of the work in progress. With René Mayer as the next president the picture changed somehow. Not only because it fitted more with the personality of René Mayer, who had a background from the French Assemblée Nationale, but also because the tasks of the High Authority had expanded and more administration and bureaucracy was therefore needed.³⁴⁴

Walter Hallstein came from the German bureaucratic traditions, which generally tends to have a strongly hierarchical structured administration. This meant a system where each administrative level would have been given its responsibility and all its affairs would either go up or down from there.³⁴⁵ However, the system of the new German republic was also one of a relatively small Bonn administration

³⁴³ Communauté Economique Européenne, Commission, Secrétariat. Bruxelles, le 7 mars 1959. Confidentiel. Description des Tâches des Fonctionnaires de Catégorie "A". CEAB 2/1672.

³⁴⁴ See Chapter II. 3. The Development of the High Authority and its Administration.

³⁴⁵ Emile Noël, *Témoignage: l'administration de la Communauté européenne dans la rétrospective d'un ancien haut fonctionnaire*. In: Yearbook of European Administrative History 1992, p. 150.

and "heavier" administrations in the Länder.³⁴⁶ As has been mentioned above, Hallstein took part in building up the German Ministry of Foreign Affairs and therefore had a unique experience which made him particularly fit for the job as President of the European Commission. The system of the European Community was, at least intentionally, to be built on much the same principles as the federal system in Germany. The central administration in Brussels and as its task the conception and general orientation of Community affairs. The necessary measures concerning implementation required an important number of executive personnel within the national administrations. The way the Commission was built up was according to a very conscious choice of Hallstein, although all the time in agreement with his colleagues. It was seen as useful to build an efficient administration from the start which would be able to give answers to the many problems. It was also going to take part in real political discussions at a high level. From the point of view of Emile Noël, this was how the Commission came to operate in its early years.³⁴⁷

Hallstein saw the need to restrict the size of the European Commission administration. At the same time, he wanted the Commission administration to have only planning, supervisory and monitoring functions, a view which had been shared earlier by Jean Monnet. Nevertheless, the two had different models and aims. According to Cassese and della Cananea, this was the reason why "the Commission was not charged with implementation tasks and did not need a "street corner" bureaucracy".³⁴⁸ As President Hallstein himself once said to his colleagues in the Commission: "*nous allons établir une grande administration*" of which he meant "an administration capable of dealing independently, based on its own competencies, with

³⁴⁶ Apart from federal responsibilities like for example Foreign Affairs and Defence, the Bonn administration was kept at a minimum.

³⁴⁷ View expressed by Emile Noël in conversation in Paris on 12 December 1994.

³⁴⁸ Cassese and della Cananea in: Yearbook of European Administrative History 1992, p. 89.

the most important preparatory studies for which the Commission is responsible".³⁴⁹ It will, nevertheless, have to be mentioned in this respect the fact that there were people who considered the Commission as too bureaucratic already from its beginning. As expressed by M. Pierre Uri, it must be considered as a mistake to have set up the Commission administration straight away. Consequently the Commission became too busy in making a bureaucracy instead of being occupied with European affairs, something which was instead left to the Council of Ministers.³⁵⁰

In relation to staffing, the main preoccupation in building up the administration was, in the beginning, to secure officials of the highest quality possible. During the first few months the Commission consisted of only twenty to thirty people and no real administration. Most of the work that was to be done had to be done at a high level, and until the end of March 1958 this meant the Commissioners and the Commission President themselves, only assisted by their personal assistants. When it came to the recruitment of staff for the higher level, the final decisions were taken by the Commission itself. President Hallstein, however, maintained a strong supervision of all appointments.

As has been mentioned above, the so-called Groups that were set up between the Commissioners in the various areas do not seem to have had any great significance, and according to Emile Noël their role was rapidly reduced.³⁵¹ Nevertheless, they were set up at an early stage and it is worth having a look at how

³⁴⁹ Yearbook of European Administrative History 1992, p. 152. "we are going to establish a grand administration." *"une administration capable de traiter indépendamment, du fait de sa propre compétence, l'essentiel des études préparatoires incombant à la Commission."* Own translations.

³⁵⁰ Interview with M. Pierre Uri by Ambassador R. Ducci, Principal of the Faculty of Social Science, University of Rome, and Madame Melchionni, Assistant Principal of same University, in Paris on 21 September 1984. In the Archives of the European Communities, European University Institute, Florence.

³⁵¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

they were organised, and how they were supposed to have functioned. They are also mentioned in the literature, by Leon N. Lindberg,³⁵² David Coombes,³⁵³ and in the book by the former Commissioner Robert Lemaigen.³⁵⁴ Furthermore, they were mentioned in the First General Report on the Activities of the Community.³⁵⁵ As it appeared in a confidential report from the Secretariat of the Commission on 5 March 1958, the distribution and composition of groups had now been set up, as well as its tasks defined.³⁵⁶ This report contained all the eight groups, the one for administration, and the Secretariat with the tasks of each group and the names of its members.

Group I, which dealt with External Relations, had Jean Rey as president, and Robert Marjolin and Giuseppe Petrilli as members. Three nationalities were hereby represented; Belgium, France and Italy. This group was divided into three different parts. The first one dealt with general questions like international organisations, as well as ambassadors from third countries and international organisations to the European Community. The second dealt with membership or association by third countries, and thirdly there was one dealing with commercial policies. The latter comprised matters such as customs negotiations, autonomous modifications of the common external tariff and safeguarding clauses in cases of diversion of traffic.³⁵⁷ As Director General was appointed a German, Mr. Seeliger, of ambassador rank. As the former Executive Secretary Emile Noël has pointed out, the fact that Jean

³⁵² Lindberg (1963) p. 72.

³⁵³ Coombes (1970) p. 124.

³⁵⁴ Lemaigen (1964) pp. 65-66.

³⁵⁵ First General Report on the Activities of the Community, 1 January - 17 September 1958, p. 21. "Internal Organisation of the European Commission. Division of responsibilities and composition of the groups." It is here stated that the work of the Commission had been divided into eight technical sections as well as one for administrations. Each of the technical sections had been entrusted to a group of three to four members of whom one was the chairman of the group.

³⁵⁶ Communauté Economique Européenne, Commission, Secrétariat. Bruxelles, le 5 mars 1958. Confidentiel. *Repartition et Composition des Groupes*. (40/58-F)

³⁵⁷ Articles 115 and 134 of the Treaty of Rome.

Rey was the Commissioner for External Relations made him have to cooperate with other Commissioners like Hans von der Groeben and Sicco Mansholt. The main problem to deal with in 1958 had been the Free Trade Area negotiations which were conducted by Jean Rey, although openly and involving Petrilli and Marjolin. However, this was done on an informal basis.³⁵⁸

In Group II Robert Marjolin served as president, with Hans von der Groeben, Piero Malvestiti, and Sicco Mansholt as the three members. These four represented four different nationalities; France, Germany, Italy and the Netherlands. This group dealt with economic and financial matters and was the one Marjolin had hoped to be given the responsibility for. He had experience in this area from his time as Secretary General of the OEEC. It was, like the first one, divided into three areas. There was one for the study of the evolution of the economic and political situation. The second dealt with monetary policies, and the third with investment. The Italian Franco Bobba served as the first Director General, a higher official from the Department of Economy of Foreign Affairs, who also had played an important part in the negotiations of the Treaty of Rome.

Group III was the one for Internal Market, lead by Piero Malvestiti. The other members here were Schaus and Rey, with the Frenchman François-Xavier Ortoli as Director General.³⁵⁹ Chef de Cabinet was Gambelli, a General Inspector of Administrative Affairs in the Ministry of Economy in Italy. He had followed all the Treaty negotiations, particularly those relating to the Customs Union. Later, he was offered the department of Commercial Affairs in DG VIII, coordinating the European Customs Union with the commercial policies of the Overseas Territories.

Further, there was Group IV which dealt with Competition under the

³⁵⁸ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³⁵⁹ According to Emile Noël, M. Ortoli worked as the *Chef de Cabinet* to Robert Lemaignan for a few months, before being appointed Director General of the Internal Market Directorate.

presidency of Hans von der Groeben, with the Dutch Mr. Veerloren van Thematis, an economist, lawyer and university professor as Director General. The other members from the Commission were Marjolin and Rey. Group V for Social Questions was the area of Giuseppe Petrilli. It consisted of the two members Mansholt and Lemaignen, and got the Belgian Mr. De Muyinck as Director General. The latter was an old trade unionist who enjoyed a great moral authority in the Belgian environment of workers.

Group VI for Agriculture was led by Sicco Mansholt. While Louis Rabot from France was his Director General, there were a further three members from the Commission; Lemaignen, Schaus and von der Groeben. The above mentioned Rabot was a higher official in the area of Agriculture who had known Mansholt for a long time, not least from the negotiations of the Treaty of Rome. He had come from the OEEC where he had been in charge of the agricultural department where he also had been involved in the negotiations for a "Green Pool". Mr. Van der Lee was appointed as the Chef de Cabinet of Mansholt as he was a man of higher university culture in Law and Economics, oriented towards humanitarian and social questions with many friends in the leading political and economic environments of the Netherlands. In Group VII for Transport, Michel Rasquin was its leader,³⁶⁰ and Malvestiti and Lemaignen its members. This Group got a Director General from Italy, Mr. Renzetti, who was a higher official from the Ministry of Transport in Rome.

Group VIII for Overseas countries and territories was the responsibility of Robert Lemaignen, with the assistance of von der Groeben and Petrilli. The Director General, Mr. Allardt, came from Germany, and had for six years been the German ambassador in Djakarta. In France there had been a certain opposition to having a German Director General in the DG for Overseas countries and territories. The reason for this, as Lemaignen explained, was the fact that many countries, especially in Africa, which were dependent on France, had been under German domination

³⁶⁰ Michel Rasquin died in June 1958 and his fellow countryman Lambert Schaus took over his position.

during the First World War.³⁶¹ He therefore had to appoint a Frenchman as Director General to start with, Jacques Vignes, an inspector of the Overseas territories who had also been a defender of the French point of view relating to the Overseas territories in the Treaty negotiations. It was only after Lemaigen had managed to calm down Paris as well as the African capitals that Mr. Allardt could be nominated, which must be seen as an important step, despite differences in the relationship between the latter and Lemaigen.³⁶² Chef de Cabinet of Lemaigen was Jacques Ferrandi who had for a long time served as the Director General of Economic Affairs in Dakar with qualities as negotiator and experience with the African economies.³⁶³

The ninth Group dealt with Administration and personnel matters and was separated from the other eight in the way it was set up and run. It was divided into three different divisions; Internal Affairs, Budget and Personnel.³⁶⁴ This Group worked under the control of the President of the Commission, assisted by the three Vice-Presidents, the so-called "Meeting of the Presidents".³⁶⁵ It was done this way as it was felt that these matters were of such great importance for the running of the Commission as a whole, and the way it would be shaped, that an overall leadership would be needed. In practice this meant that any initiative had to come from the President himself. The President also had the right to put any matter before the

³⁶¹ As Robert Lemaigen expressed it himself, this was particularly upsetting for French and African politicians due to the German domination in Togo and Cameroun which had been "worsened by the outburst of Hitlerian racism". (*"aggravés par l'éclat du racism hitlérien"*) Lemaigen (1964) p. 66-67.

³⁶² Lemaigen (1964) p. 66

³⁶³ Former Executive Secretary Emile Noël, on the other hand, did not agree with such a presentation of the Commission and claimed there to have been other, unknown reasons for not appointing Mr. Allart immediately. View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³⁶⁴ Services common to all the three Communities, ECSC, EEC and Euratom: Legal Service, Statistical Office and the Common Service for Press and Information.

³⁶⁵ After the initial few months, as Emile Noël recalls, the "Meeting of the Presidents" came together with less frequency. See below 5.1.

European Commission at any time as being a person above the Groups and the Directorates General.³⁶⁶ The ninth Group did not, however, meet with too much frequency. Within this Group, which was totally separate from the DG IX for Administration, was also put the responsibility for the Common Services which each was run by an Inter-executive Group, formed by Commissioners from the two Commissions of the EEC and Euratom, as well as representatives from the High Authority.³⁶⁷

The DG IX for Administration was divided into three Directorates. By 1967 it had become the largest single unit among the Commission's administrative services, with more than twice as many officials as the largest of the other DGs. However, due to its structures and leadership, it was also the weakest and the least autonomous, with less power delegated from the Commission staff. One of the reasons for the size of the DG IX had to do with the large number of translators, interpreters, and also of various technicians. The size of this DG, therefore, does not tell very much about its organisation or importance. The Director General of DG IX was the Dutch Mr. van Karnebek. He was a diplomat from a family traditionally attached to the "Pleyjn", the Dutch "Quai d'Orsay".

3.2 Directorates General

In correspondence with the groups indicated above, the Commission also organised its services into nine Directorates General, and one Executive Secretariat. In the beginning there was normally one DG under the responsibility of each Commissioner.³⁶⁸ To these groups were added other sectors, in particular certain services that the three executives had in common. The DGs themselves were also

³⁶⁶ EEC - First General Report 1958, p. 21.

³⁶⁷ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

³⁶⁸ As the Commission has expanded its role into other areas, as well as enlarged the number of member States in the Community, the number of DGs has increased. There are as of 1995 more than one DG under each Commissioner. (1994: 17 Commissioners and 23 DGs. 1995: 20 Commissioners and 23 DGs)

subdivided into directorates endowed with proper allocations. Each Directorate, further contained three to four Divisions which were sub-areas of the Directorates. The DGs were lead by a Director General, who would be the highest civil servant in the Commission administration, an administrative figure who played the role more or less as the Permanent Secretary in a British Government. Apart from Luxembourg with no Director General,³⁶⁹ and Belgium which had one, the other member States were all represented with two Directors General. As the head of its administration the Director General was responsible to the Commission, through the appropriate Commissioner. Serving as the head of each Directorate was a Director, and the Divisions all had their "*Chef de Division*"; Head of Division.

At the time of the publishing of the First General Report, on 17 September 1958, the principal framework of the groups had been equipped with their tenure and a certain number of officials had also been recruited. This, in fact, had been done relatively quickly at an earlier stage. As has been mentioned above, the broad lines of the Commission's organisation was already set up by the beginning of March 1958, and the DGs were constructed shortly afterwards. Considering the provisional character of the administrative and financial regime, it seems that the personnel had been engaged on much the same basis as what was practiced by the ECSC. This meant that the European Commission also made possible a harmonisation of the regimes applicable to the personnel in all three of the European Communities.

A provisional plan for the distribution of tasks in the DGs was published in February of 1958,³⁷⁰ however with some posts among the personnel still being vacant as the Council of Ministers would distribute these the year after. It shows that some stress was put on national quotas. According to an early agreement, each country had a certain number of posts, but when it came to higher levels, these had

³⁶⁹ The Government of Luxembourg had considered it difficult to present an adequate candidate, from its small population, for such a heavy task as a Director General.

³⁷⁰ Communauté Economique Européenne. Commission. Plan Provisoire de Repartition des Tâches. (1652/2/58-F)

to be staffed by different nationalities. The Commissioner and the Director General had to be of different nationality, and the same applied for the Director General and the Director of the same DG. The division by nationalities was, in principle, based on the same system with the same quotas used for the Commissioners: two each for Germany, France and Italy, and three together for the Benelux countries. Despite such a division, there were no strict rules regarding the distribution of posts. From very early on, however, Germany, France, Italy and the Benelux countries had more or less the same number of grade A officials.

Discussions were going on between the Commissioners during the period from January until March 1958 about portfolios, the structuring of the DGs, naming of Directors General and so forth. The selection of candidates to posts in the DGs was a careful process which was followed closely by President Hallstein. The Directors General were chosen by the responsible Commissioner, assisted by his assessors, before their appointments were taken to the Commission.³⁷¹ Nevertheless, all the main candidates were personally received by President Hallstein for an interview, and his "green light" was essential for any appointment. On the 23-24 March 1958 a global decision was taken where all the nine Directors General, together with the Executive Secretary, were nominated. Decisions regarding the more detailed structure of the DGs were taken shortly after by the Commissioners and their President jointly. The problem from this date onwards was to implement the decisions taken.³⁷²

3.3 The Executive Secretary

As a tenth "division", although different and separate from the others, was the Executive Secretariat of the Commission, which was modelled on the French "*Secrétariat Général du gouvernement*". Its job was to prepare and run the Commission meetings, as well as pass on decisions taken by the Commission and to

³⁷¹ Lemaigen (1964) p. 64-65.

³⁷² View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

have the administrative control of the execution of these. It was further the administrative link with other institutions of the Community and with the other two European Communities. Of particular importance was its administrative relations with the Parliamentary Assembly of the Communities, its working groups, and relations with other European Assemblies. It has served as the Community's "watchdog" vis-a-vis the administration, the member States, and the "outside" world. The Deputy Secretary served as the Permanent Representative of the Commission in the Committee of Permanent Representatives. The Executive Secretariat was also responsible for the publication of the *"Journal Officiel"*, where all official acts of the Commission had to appear.

The idea behind the Executive Secretariat was as an attempt to institutionalise the Commission's collegiality. It had a similar role to that of the Cabinet Secretariat in the UK,³⁷³ and it acted as a guardian of the collegial nature of the Commission. The role of the Executive Secretariat was described in Article 16 of the *"Règlement Intérieur de la Commission"*,³⁷⁴ where it was stated that it should, among other things, assist the President of the Commission in preparing for the Commission's meetings, conduct the written procedure, ensure that the decisions of the Commission were followed up as required (*"s'assurer [...] la régularité de l'exécution des délibérations de la Commission"*).³⁷⁵ It further represented the Commission in its

³⁷³ The origins of the Cabinet Secretariat can be traced back to 1903 when, under Prime Minister A. J. Balfour, a Foreign Office clerk was assigned to keep the Minutes of the Committee of Imperial Defence. Later, the size and importance of the Secretariat grew and it came to prepare agendas and keep Minutes as well as provide a link between the departments concerned. During the 1950s and 1960s the Cabinet Secretariat was the support of the whole Cabinet system, keeping the Cabinet and the committees in mesh. The Cabinet Secretariat became an important instrument in providing a link between decisions taken in the Cabinet or committee and the departments of State. Patrick G. Walker (1970) *The Cabinet* (London: Jonathan Cape Ltd.) pp. 48-56.

³⁷⁴ Règlement Intérieur de la Commission. Journal Officiel des Communautés Européennes, 31.1.63.

³⁷⁵ "to ensure [...] the regularity in execution of Commission decisions". Règlement Intérieur de la Commission. Journal Officiel des Communautés Européennes, 31.1.63.

relations with other institutions of the EEC as well as those of the ECSC and Euratom.

The first Executive Secretary of the Executive Secretariat was the Frenchman Emile Noël, with the Deputy Executive Secretary being the German Winrich Behr. Originally it was meant to be no more than a technical, administrative body to assist the Commission when required. However, under the personality of Emile Noël, it acquired a more important role and became an essential part of the Commission's machinery, essential for its functioning in many vital sectors.³⁷⁶

Emile Noël served as the Executive Secretary of the European Commission from its start in 1958, when he was only 36 years old. He retired from this position in 1987 to become the Principal of the European University Institute in Florence. Before that he had already worked as a truly European civil servant. He started his career in 1949 as the Secretary of the General Affairs Committee of the Consultative Assembly of the Council of Europe, where he stayed until 1952. From 1952 until 1954 he was the Head of the Secretariat of the Constitutional Committee of the ad hoc Assembly where he was responsible for drafting a blueprint for a European Political Community. Between 1954 and 1956 he was back in the Council of Europe serving as the Chef de Cabinet to the then President of the Consultative Assembly of the Council of Europe, Guy Mollet. In 1956 Guy Mollet was elected Socialist Prime Minister of France and Emile Noël followed him as his Chef de Cabinet, and later Deputy Director of his Private Office. In the latter position he was the Prime Minister's representative in the French delegation to the negotiations for the Treaties of Rome.³⁷⁷

Emile Noël influenced strongly trying to keep the Commission administration as open as possible. As he was not appointed until the end of March 1958, most of the decisions on administrative structures had already been taken and approved, and

³⁷⁶ Hallstein (1972) p. 61.

³⁷⁷ University of Edinburgh, Degree of Doctor *honoris causa*. Laureation Address, 23 July 1982: Emile Noël.

he could do little about its shape. However, once appointed to his position, he worked for a better coordination between the DGs, keeping all the various "lines" open. In the beginning there were the nine Directors General, the Executive Secretary and the Deputy Secretary, and there was hardly any staff. Openness as well as cooperation and coordination among them was essential during the first year, and they functioned very much as a close team. Later, however, it seemed that the DGs developed themselves as a kind of fortress, and any horizontal links between the DGs became more and more difficult and rare. The vertical system that developed between the DGs came soon to reveal itself as too closed, and as the administration grew the links between the Commission and the DGs became fewer. Nevertheless, he managed to improve the efficiency and working methods of the Commission and its administration. Emile Noël's task was to build up an efficient department as well as to try to maintain links with other departments and levels. In the beginning there had been practically no links between the heads of the various departments and the lower levels and this was where he could put in some influence of his own. Together with the Deputy Secretary, the Executive Secretary was the only non-Commissioner allowed to participate in the Commission meetings, which took place on Wednesday mornings. Emile Noël further introduced a Thursday meeting with the Directors General, as well as a Friday meeting with the assistants to the Directors General. Both of these meetings were meant as a briefing on the work of the Commission and its policies. With the Merger of the Executives in 1967, the Executive Secretary started to meet at a regular basis with the Chefs de Cabinet. Such meetings helped to open up the Commission, as well as bringing the staff into the team.³⁷⁸

3.4 The Committee of Permanent Representatives

During the negotiations of the Treaties of Rome, a Committee of Heads of Delegations was set up under the chairmanship of Paul-Henri Spaak. It became a meeting place for authorised and faithful spokesmen of the six governments. After

³⁷⁸ Views expressed by Emile Noël in a conversation in Paris on 12 December 1994.

25 March 1957, when the Treaties of Rome had been signed, more or less the same men were to be found in what was known as the "Interim Committee".³⁷⁹ At the conference of Ministers of Foreign Affairs in Paris on 7-8 January 1958 a Communiqué was published stating that "the Ministers of Foreign Affairs had recognised the advisability of appointing permanent representatives to the Communities as soon as possible." The Permanent Representatives were hence given ambassadorial "rank and prerogatives", and, according to Emile Noël, it seems reasonable to think that this was introduced at the initiative of members of the "Interim Committee". Some of these were later to become the first Permanent Representatives to the European Communities.³⁸⁰

The Treaty of Rome wanted to make the Commission into the "motor" of the Community. However, as put by Lemaigen, "almost every time the Commission tried to take any of the initiatives given to it by the Treaty, the national administrations would combine their efforts in trying to substitute the Community actions with a traditional negotiation of the Six."³⁸¹ The first manifestation of this came with the creation of the "Permanent Representatives" to the Community, in January 1958. The decision was justified by Article 151, second paragraph, of the Treaty of Rome, where a committee of representatives from the member States was mentioned: "The Council shall lay down its rules of procedure. These rules of procedure may provide for the establishment of a committee of representatives of

³⁷⁹ The members of the Interim Committee were: Baron Snoy et d'Oppuers, President (Belgium), M. Ophüels (Germany), M. Faure (France), M. Benvenuti (Italy), M. Schaus (Luxembourg), and M. Linthorst Homan (Netherlands). Other members were: M. Van Tichelen and M. Van der Meulen (Belgium), M. Cattani (Italy), and M. Borschette (Luxembourg). The Interim Committee consisted of heads of the national delegations who had taken part in the intergovernmental conference. The Committee's mandate expired originally on 1 January 1958, with the coming into force of the Treaty of Rome, however not the need for it. It prepared the inaugural Foreign Affairs Council meeting on 25 January 1958 where it decided unilaterally to call themselves "permanent representatives". In: Hayes-Renshaw (1990) *The Role of the Committee of Permanent Representatives in the Decision-Making Process of the European Community*, p. 106.

³⁸⁰ Noël (1967) p. 219-220.

³⁸¹ Lemaigen (1964) p. 84.

Member States. The Council shall determine the duties and powers of that Committee." Nevertheless, the size and level of these delegations to the Community would be up to the member State governments themselves to decide.³⁸²

As the installation of a Permanent Delegation and the appointment of a Permanent Representative was an act of national concern, representing a member state of the Communities, it did not need to be sanctioned by the Community. The Committee was an auxiliary body to the Council, consisting of national civil servants. In 1958 its role was presented as "the servant, the eye and the ear of his Government",³⁸³ by being tied by instructions to his government. Firstly, the Permanent Delegations were a link between their national administrations and the Community institutions and a mutual supply of information. Secondly, they participated in working out and coordinating national attitudes, and lastly, they participated directly in the work of the Community institutions. The Permanent Delegations were also generally better informed and more alert than the government services, and they followed closely the actions and the initiatives of the Commission. This way they could more easily pick out what might be foreign to the views of their Governments. The Permanent Delegations also helped working out its Government's position on various matters. Therefore, in many ways, they acted as "ambassador of the Community" to their Government, or one could even say that they acted "as a powerful advocate of the Community interest when national positions are being formulated"³⁸⁴. Emile Noël further argued that "[T]he Committee is sometimes the setting chosen by the Governments to express their reservations on a measure taken, or even a declaration made, by the Commission in the hope that they will there

³⁸² It was not until the Merger Treaty, Article 4, which came into force on 1 July 1967, that a "committee consisting of the Permanent Representatives of the Member States" was formally established. Article 4 reads as follows: "A Committee, consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter."

³⁸³ Noël (1967) p. 223.

³⁸⁴ Official Publication of the European Communities (1990) p. 96.

obtain the support of other delegations - which is sometimes the case.³⁸⁵ Further, there was a civil servant from the Commission who would assist in the meetings of the Permanent Representatives and give a report of its debates to the Commission.

Neither the Council of Ministers, nor the Permanent Representatives could seize other questions than the ones the Treaty had foreseen in the discussions between the Commission and the Council, which formed a necessary protection for the role of the Commission. Considering the fact that the Committee of Permanent Representatives was both a meeting place and a place for dialogue between the national and Community authorities, it was seen by Emile Noël as "the beginning of a political process working towards - and sometimes eventually achieving - the synthesis of a Community solution which the Council and the Commission will ultimately have to approve".³⁸⁶

The decision to establish the Committee of Permanent Representatives (COREPER³⁸⁷) was taken at the first session of the Councils on 25 January 1958.³⁸⁸ However, it was not given any power of decision of its own. This would remain entirely with the Council of Ministers. Article 16 of the Rules of Procedure of the Council mentioned, as did the Treaty itself, a "Committee composed of representatives of Member States". This meant that each member State remained free whether or not it would appoint its 'representative' in the Article 16 Committee.

³⁸⁵ Noël (1967) p. 243.

³⁸⁶ Official Publication of the European Communities (1990) p. 87.

³⁸⁷ COREPER stands for the French title "*Comité des représentants permanents des Communautés européennes*", and will be used throughout as an abbreviation.

³⁸⁸ M. Cattani from Italy was appointed as Ambassador to the Community on 11 February 1958, with the other member countries following shortly after. On 22 February M. Schaus (Luxembourg) was appointed. Baron Snoy et d'Oppuers (Belgium) was appointed to the EEC and M. Van Tichelen (Belgium) to Euratom on 8 April. Belgium was the only country to appoint two Ambassadors, but they were replaced a few months later by M. van der Meulen. Further, on 19 April M. de Carbonnet was appointed from France, M. Linthorst Homan from the Netherlands on 12 May, and, lastly, M. Ophüels from Germany on 26 June.

They were neither legally obliged to entrust this function to its Permanent Representative. This was proved by Belgium and Luxembourg who, in 1958 and 1959, expressly confirmed that their Permanent Representatives would speak for them in the Article 16 Committee.

The system of Permanent Representatives to the Community could in certain ways be compared with the German Länder system. The Permanent Representatives have more or less the same relationship to the Governments as between the permanent representatives in Bonn and the Länder ministries.

COREPER follows the same system of presidency as the Council of Ministers. The chair would be taken by the Permanent Representative of the member State occupying the chair at the Council, with the same six month rotation.

The Commission was represented in COREPER only by officials. COREPER has sometimes raised the question of having members of the Commission at certain deliberations. The Commission itself, however, preferred meetings on specific matters between its competent member, at his invitation, and the Permanent Representatives. As soon as the services were set up in the spring of 1958 the Commission handed over the responsibility of representing the Commission in COREPER permanently to the Executive Secretariat. However, the Executive Secretary did not have this responsibility alone. Also the various Departments of the Commission were represented according to the agenda. As Emile Noël has pointed out, "the Executive Secretary and his deputy are represented at all Commission meetings" which "puts them directly in the picture as to the general thinking and main concern of the latter [the Commission], and this helps to guide their action in the Committee [of Permanent Representatives] or, where necessary, enables them to advise the Directorates-General."³⁸⁹

In Robert Lemaignan's opinion, the creation of COREPER was the first

³⁸⁹ Noël (1967) p. 240-241.

attempt of the national administrations towards their secretly entertained dream of seeing this body completely dependent on the governments, progressively substituting itself for the Commission, shrinking the Treaty of Rome, and making its actions discreetly oriented towards traditional international meetings.³⁹⁰

4. FUNCTIONS AND FEATURES OF THE EUROPEAN COMMISSION

4.1 The Functioning of the European Commission

As a Community institution the European Commission is independent of any national or international authority, and as opposed to the Council of Ministers representing the national interests, the Commission is the spokesman for the "Community interests". Nevertheless, this independence of the Commission has often been a matter of discussion. As Siotis pointed out, the "absence of certain political conditions" has often slowed down, or even stopped completely, the activities and processes initiated by the Commission "if the Council was unable to reach any decision".³⁹¹

The rules concerning the functioning of the Commission were established from the very beginning by the Treaty of Rome. Article 163 stated that resolutions of the Commission were acquired by the majority of the number of members already fixed by the Treaty which was a majority of five votes. For the Commission to be a quorum, it was decided that at least five members out of the nine had to be present. This follows the example of the High Authority of the ECSC.

Rules concerning the decision-making procedures of the Commission were mostly decided by the Treaty. However, it was up to the Commission itself to define the particulars of its internal organisation by which decisions would be prepared and their implementation controlled. According to the view of Sicco Mansholt, national

³⁹⁰ Lemaigen (1964) p. 87. In Emile Noël's view, however, the opinion hereby presented has not been confirmed nor supported through the work of this body.

³⁹¹ Siotis (1964) p. 229.

sovereignty would stay total as long as the right to veto remained.³⁹²

The First General Report of the EEC of 1958 described two counter-opposed solutions in the area of decision-making. On the one hand it was the strict collegial virtue where even the preparation and control with implementation would be dealt with entirely by the Commission. The other solution was one of a division of tasks where each member of the European Commission would assume the responsibility for one particular sector, a kind of ministerial principle. The first theory was not considered as very practical as it would involve the Commissioners spending all their time holding meetings. The second theory, the supranational principle, had not yet gone far enough to allow of resort to a ministerial procedure. As a consequence, the Commission followed the practice of the High Authority,³⁹³ adopted an intermediate system and "divided its work into eight technical sections, to which must be added the further section covering administrative questions".³⁹⁴

David Coombes, on the other hand, has pointed out the fact that "the Commission has two essential characteristics, one of which is summed up in the term 'independent', and the other in the term 'European'". To deal with the first point first, the Commission must listen to the member States with equal respect, and be impartial politically as well as towards nationality. By "European" Coombes referred to the fact that the Commission "must discern the common interest clearly and accurately and promote it energetically. In this sense it must be partisan and

³⁹² Mansholt (1974) p. 118.

³⁹³ In Jean Monnet's opinion there were two possibilities of how to organise the work of the High Authority. Either, the President would be responsible for the administration, although powers would be widely delegated. Further, "in discussions and decision making, the High Authority would act as a joint body, but not where administrative responsibilities were concerned". As a second alternative, each member of the High Authority would be given the responsibility of a division or a department, making the High Authority act like the Council of Ministers. Monnet preferred the latter solution which was adopted after long consultations with the other colleagues. Spierenburg and Poidevin (1994) p. 70-71.

³⁹⁴ EEC - First General Report 1958, p. 21. The "sections" referred to here are what is more commonly known as "Portfolios" which has been used throughout the text.

protagonistic."³⁹⁵

In his discussion about the use of the majority rule adopted by the Commission, Siotis claimed that this practice was not all that much used. He indicated that "rarely, if ever, were important decisions taken in the absence of unanimity among its members", due, to a large extent, to national considerations.³⁹⁶ The institutions of the EEC were based on the original concept of an independent executive body, taking decisions by majority vote. This would mean exercising powers transcending the national frontiers of the member States. The ultimate objective would be to attain, through integration, a complete political unification, or at least a federation of the Six. As an example of the use of majority vote, he mentioned the European Danube Commission where members who found themselves in a minority rarely exercised their veto rights because of their adherence to the concept of the "general interest" of Europe.³⁹⁷ However, this was not the case in the European Commission where national interests always seemed to come first. He argued further that the promoters of the "functionalist integrationist" institutions of the Communities saw their establishment as the first step towards political union. This would, however, imply the existence of a common political consciousness, or, at the very least, the acceptance of strong bonds of political solidarity. As Siotis claimed, it would be difficult to say that the structures and the functioning of the European executives were preparing the way for the realisation of such a political union. He further pointed out the, in his view, false assumption that

³⁹⁵ Coombes (1970) p. 78.

³⁹⁶ Siotis (1964) p. 229- 230. Emile Noël does not wholeheartedly agree with these arguments put forward by Siotis. According to Noël the Commission took decisions based on a consensus during its early years, and later, in the 1960s, it started voting procedures. The idea formed by Jean Monnet in the High Authority, of always arriving at a consensus on an informal basis before any decisions were taken, had thereby been left behind. Monnet's idea had its outspring in the thought that the High Authority was a collegiate body where there should be no trace of any disagreements, especially not between France and Germany. It had also been easier to carry out with a more modest workload.

³⁹⁷ The Executive Committee of the European Danube Commission was responsible for the functioning of the supranational administration which was established by the Paris Treaty of 1856. Siotis (1964) p. 229.

the six member States should represent already before joining together in the European Communities, a "Community" in a sociological sense of the term. For a Community to exist according to such a definition, there would have to exist "certain bonds of solidarity" between the members which would distinguish them, and their Community, from other members of the surrounding social milieu. Siotis was in this connection questioning whether their "intra-Community" relations had made any changes or modifications to their patterns of national political behaviour, making this distinct from the behaviour governing their relations with outsiders. In fact, what he said was that one could never assume that an economic transformation of a region should have any "automatic effects on the nature of the regional political sub-system", in this case the European Community.³⁹⁸

4.2 The Functions of the European Commission

When analysing the various functions of the Commission, commentators have identified different categories. The way David Coombes saw it they could be divided into four functions. These would be an Initiative function, a Normative function, an Administrative function, and a Mediative function. With the Initiative function he meant the Commission's right to initiate Community legislation and its power to make recommendations on any matter which it thought fit within the framework of the Treaty. To be able to fulfil this function required a dynamic and innovative institution which is not usually what is thought of as a bureaucracy. The second function described by Coombes was the Normative function. This was where the Commission acted as the "guardian of the Treaty", or "the conscience of the Community", interpreting the Treaty and determining the Community interest. Coombes argued that with the two functions mentioned above the Commission was given the role of a political leader and promoter of the Community interest. This was also, he argued, how the Commission could be distinguished from an intergovernmental organisation like for example the OEEC.

³⁹⁸ Siotis (1964) p. 235.

The third Commission function would be the Administrative one where it had to perform certain technical tasks as well as the taking of a vast number of regulatory decisions with its outspring in the Community legislation. According to Coombes, its initiating role came constantly under threat from its administrative responsibilities. The fourth, and last of the Commission's functions was the Mediative function arising from its duty to bring about agreements between the member States in the Council of Ministers, and he argued that this was what the Commission seemed to be doing as its role in COREPER, in its sub-committees, and in the Council of Ministers.

The Commission was, as Coombes pointed out, constantly being strained between its Normative and Initiative functions on the one side and its Mediative and Administrative functions on the other. The first group was a promotive group and the other, an implementative group. In a "classical" civil service these two groups would not be combined and the stress would be put on the implementative functions.

Jean Siotis, on the other hand, was of the opinion that the politically most important category of the Commission's functions was to be found in the diplomatic field. One was its representational functions, where the Commission operated in a similar way to national diplomatic representatives. Another category would be those functions which have developed in the EEC practice of negotiating with "outsiders". As the representatives of non-member States are classed as "ambassadors" to the Community, the Community assumed an important prerogative of statehood and the Commission, in its relations with them, that of a government.³⁹⁹

Other roles of the Commission were, in Siotis' opinion, first the role conferred upon it by Article 155 of the Treaty of Rome, stating that "the Commission shall 'ensure the application of the provisions of this Treaty and of the provisions enacted by the institutions of the Community in pursuance thereof'". In other words, the Commission had a role as the "guardian of the Treaty". As a

³⁹⁹ Siotis (1964) p. 239.

second category of Commission roles Siotis pointed out "the function of the Commission related to its powers to take decisions 'of its own (*d'un pouvoir de décision propre*), under the conditions laid down in this Treaty'", and further to "participate in the preparation of acts of the Council and the Assembly". This latter category referred to its decision-making powers as well as its right, and obligation, to propose legislation to the Council of Ministers.⁴⁰⁰

Sabino Cassese and Giacinto della Cananea⁴⁰¹ divided the functions of the Commission into three different categories. The first one was "initiating the decision and law-making process, by forwarding proposals" to the law-making body, the Council of Ministers. Secondly, the Commission was to "act as the guardian of Community orthodoxy", or "guardian of the Treaty" as others would call it. This would involve being a "watchdog" over the "implementation by Member States of their obligations stemming both from the Treaty and subsequent legislation". As a last function, it was to implement the Community's laws and policies. Although, as Cassese and della Cananea argued, the Commission was the Community institution with the widest executive functions, they would not go as far as to call it the "executive body of the Community". One of the reasons for this being the fact that in most cases the implementation of Community legislation was left to the national administrations.

In Walter Hallstein's view the functions of the Commission were threefold. Firstly, it was to serve as the motor of the Community. The Commission had been given the obligatory responsibility of drafting proposals and plans in two ways. It had to initiate action which was the only way the Council of Ministers could take decisions, and, furthermore, it had the monopoly in initiating action. Secondly, the Commission was the "guardian of the Treaty" where it had the duty to make sure that Treaty provisions were being kept as well as to intervene if they were broken. In certain circumstances the Commission could bring an action before the Court of

⁴⁰⁰ Siotis (1964) p. 237.

⁴⁰¹ Yearbook of European Administrative History 1992, pp. 82-83.

Justice. Lastly, the Commission was the "honest broker" of the Community. This would mean taking deliberations of the Council of Ministers as a matter of course, to initiate and submit plans and help the Council to reach decisions. The Commission would as well operate as an institution outside national interests.⁴⁰²

During the first few years of the Commission's existence, in particular during 1958 and 1959, it would be fair to characterise the European Commission as more of a political body. Its most important task during this period was the launching of common policies, implementing the common market and building common policies, as well as negotiating with third countries in the Free Trade Area negotiations and the Kennedy Round of GATT. Furthermore, there was little work to be done at this early stage in the field of executive implementation.⁴⁰³

4.3 The European Commission - a "European Civil Service"?

In the way the European Commission was built up and according to several of its functions, it had many similarities with national governments where the Commissioners would play the role of the ministers, and the staff the role of the civil servants. Despite similarities, however, scholars disagree as to what extent the Commission staff can be classified as a "European Civil Service".

The Staff Regulations were set up to provide the legal framework for a "classical" career civil service. They dealt with official representation of personnel, and arrangements for automatic advancement of salaries and promotion by seniority. They further gave the right to pensions, and a limitation of recruitment to lower grades as well as to candidates possessing fixed qualifications by an independent selection board.

According to the Treaty of Rome, Article 212 it was stated that "The Council

⁴⁰² Hallstein (1972) p. 58.

⁴⁰³ The Free Trade Area negotiations and the Commission's role during these will be the theme of Chapter V below.

shall, by unanimous decisions, in co-operation with the Commission and after consulting the other institutions concerned, lay down the Staff Regulations for officials and the conditions of employment for other servants of the Community. After this Treaty has been in force for four years, the Council may amend such regulations and conditions of employment. It shall do so by qualified majority vote on a proposal of the Commission after the other institutions concerned have been consulted." Another place in the Treaty, Article 179, was referring to the Staff Regulations in that "The Court of Justice shall have jurisdiction to adjudicate in any dispute between the Community and its subordinates within the limits of and under the conditions laid down by their regulations or terms of employment."

The Staff Regulations for the EEC and Euratom came into force on 1 January 1962.⁴⁰⁴ The provisions of the Regulations had been adopted in draft form at the end of February 1961 and approved by the European Parliamentary Assembly and the European Court of Justice in October that year, as required by the Treaty of Rome. These Regulations were to apply to all officials appointed to permanent posts under its provisions within the institutions of the EEC and Euratom.

It had taken nearly four years of negotiations between all the parties involved. It was a battle between the national forces, represented by the Council, as well as by COREPER, on the one hand, and the Community forces, represented by the two Commissions on the other. Each member State did its best to exert influence in the direction of their own national administration, while the two Commissions tried to create the best administrative system for a European "civil service", independent of national administrations and governments. Before the Staff Regulations came into force, the appointment of officials to the Commission was done by individual contracts. As a foundation for the Regulations was used the equivalent Staff Regulations, or "*Statut de Service*" of the ECSC, adopted in 1956. However, the establishment of administrative foundations was not seen as a priority by the majority

⁴⁰⁴ *Statut des fonctionnaires et le régime applicable aux autres agents de la CEE et de la CEEA*, Règlement No. 31 (CEE), 11 (CEEA), Journal Officiel des Communautés Européennes, No. 45, 1962, pp. 1385-1460.

of the members, and, in particular, not by the Commission President Walter Hallstein.

According to the definition of a "classical" civil service, five standards had to be met by the Commission as far as that would have been possible. Firstly, there had to be an open competition based on a competitive examination of merit or technical ability. Secondly, higher posts would be filled from within the service and recruitment would be confined to the lowest grades. Further, promotion happened by seniority, usually in combination with merit. A fourth standard was that supervision and control should be centralised, which means delegating responsibility for personnel administration to a specialised agency within the service. Lastly, membership of the service should normally constitute a lifetime's career and the official should not be prejudiced by any "subjective" elements, such as political or personal views, race, sex or place of origin.⁴⁰⁵ These criteria were being met to a large extent by the Western European countries, although not completely. This was the case also for the member States of the EEC but when it came to the latter there were certain obligations of a much more pressing and immediate nature. Firstly, in the Commission, distribution of posts was supposed to take place according to nationalities. A common agreement had made this distribution to be roughly proportionate to the member States' budgetary contributions as laid down in the Treaty of Rome, Article 200.1. According to Article 27 of the Staff Regulations, officials were to be recruited "on the widest possible geographical basis among the nationals of member States" and the Commission was under strong political pressure to maintain this distribution even if it served as a limitation on its freedom to appoint to posts. Secondly, distribution of posts in the Commission were to be by grades. It was up to the Council of Ministers to determine the total number of posts to be filled by the Commission in any one year as well as the distribution of those posts in categories and grades. As a third obligation the possibilities of transfer from within were limited by the specialised function associated with many of the higher posts in the administration. Therefore it was often necessary to recruit from the outside, and

⁴⁰⁵ Max Weber's definition of a "classical" civil service. Coombes (1970) p. 124-125.

at the same time recognising that, according to a "classical" career civil service, they should have been filled from within. Lastly, there was the obligation arising from the interest of the member governments in the administration of personnel of reserved posts. The selection and preferment of officials was closely followed by the member governments and the individual Commissioners. Although it was difficult, or almost impossible, to prove that certain posts in the service might in practice have been reserved for a particular type of candidate or party affiliation, the existence of reserved posts was not denied and was often the cause for long delays and difficulties in filling posts in the need to find the "right" candidate.

The responsibility of recruiting the most senior staff to the Commission was intended as a national responsibility, at least in so far as the involvement of national governments were concerned. As David Coombes put it, it would seem "widely accepted that the more responsible positions were bound to be filled with some reference to the appointee's political views or to his nationality".⁴⁰⁶ Furthermore, he pointed out "the Commission's dependence on the support of member States and their representatives for sustaining progress in the development of the Community".⁴⁰⁷ The responsibility of promotion of staff, on the other hand, was meant to be kept as a Community responsibility, which would mean the responsibility of the Commission. Nevertheless, promotion as well seemed increasingly to become a national responsibility. It was the only way the national governments could influence the development of the Commission administration. According to Commission President Walter Hallstein, however, this was not so much of a problem. As he put it:

"I have never shared the view that in selecting its civil servants the Commission could loftily dismiss the question of the nationality of the candidates, by simply saying: 'We recognize only Europeans'. Such an attitude appears to me not only to be naïve and dogmatic but also to ignore political reality. It is only natural that the nations making up the Community want to see their membership reflected in the

⁴⁰⁶ Coombes (1970) p. 162.

⁴⁰⁷ Ibidem.

composition of the Community's Civil Service."⁴⁰⁸

Although what he is talking about here is the fact that there existed national quotas in the Commission administration, it does show something about his general attitude to the problem.

Jean Siotis has claimed that "the procedures for recruitment, nomination and promotion and the more general questions of staff mobility"⁴⁰⁹ composed some of the problems of an administrative character the Commission had to face. He further declared the reason for this to be the lack of interest administrative matters had received during the establishment of the Commission, and in particular the fact that "the *direction générale de l'administration* was the last to be established".⁴¹⁰ This, he claimed, had much to do with "a limited interest in administrative matters"⁴¹¹ from President Hallstein who, in his function as President of the Commission was directly in charge of administration. Further, one of the main problems of the functioning of the Commission was the fact that policies and traditions from several different administrations of the Community had been brought together in one, without having formulated a coherent policy during the process of building up a "European Civil Service". The responsibility of recruiting, nominating and promoting staff was to lie with the Commission. When it comes to recruiting during the first years, this happened mainly through secondment from national administrations. Although nominations were supposed to be done by the "Commission acting collectively" this meant in practice that national considerations were taken into account by the individual Commissioner. Lastly, as Siotis argues, the promoting of staff had become a rather bureaucratic procedure, certainly due to the introduction of the Staff Regulations of 1962.⁴¹²

⁴⁰⁸ Hallstein (1972) p. 61.

⁴⁰⁹ Siotis (1964) p. 244.

⁴¹⁰ Siotis (1964) p. 244. We have earlier stated that all the nine DGs had been established at the same time, on 23-24 March 1958.

⁴¹¹ Siotis (1964) p. 245.

⁴¹² Siotis (1964) p. 245-246. No other documentation has been found in support of Siotis' assumption that Hallstein had a "limited interest in administrative

The "Staff Regulations of Officials and the Conditions of Employment of Other Servants" which came into force in 1962 were meant to secure for the Community the services of officials of the highest standard of independence, ability, efficiency and integrity. At the same time staff were to be recruited on the broadest possible geographical basis from the member States. In this way maximum efficiency was hoped for. The responsibility for recruitment was given to what was called the "appointing authority", without any further specification.⁴¹³

Despite these obligations put on the Commission, making it impossible to create a proper "European Civil Service", the laying of administrative foundations, in the way known from national administrations and civil services, was not a priority of the leading actors in the new Community. In the first years the administrative arrangements were essentially ad hoc and pragmatic. Not only were there deficiencies in the system and framework of the administration when compared to a "classical" career civil service, but also the staff that was being employed had different attitudes and outlooks. France, as well as Italy to a large extent, had a system of short-term secondment from its national administration.⁴¹⁴ Germany's system was based on "lending" officials, and it was left to the officials themselves to decide whether they would return to their national administration or not, however

matters".

⁴¹³ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. Official Journal of the European Communities, 14.6.62, 1385/62, Articles 27-34.

⁴¹⁴ This system of secondment of officials from national administrations had already been established in the Secretariat of the League of Nations. These officials, although being in the same position as their colleagues who served in the League Secretariat as a career, remained on the staff lists of their national departments being on indefinite leave of absence. On renouncing their service in the League they returned to their national departments with the years spent in the League service automatically added to their seniority privileges. In Mr. Ranshofen-Wertheimer's opinion, the danger of this system was the fact that these officials would fulfil their duties "with one eye constantly on the pleasure of their governments, with the result that they never fully entered into the spirit of their international employment". Mr. Ranshofen-Wertheimer served as an official in the League Secretariat from 1930 until 1940. Ranshofen-Wertheimer (1945) p. 343.

with no formal assurance given regarding the post to which they might return. At the time, the nearest one could get to a real "European Civil Servant" were the young graduates coming directly from the various universities, who would be primarily loyal to their specialism. They did not join the Commission out of commitment or in hope of later advancement in a national civil service, but rather to get a decent job. In Coombes' view these were "the nearest thing to real 'European civil servants'" as they had not already made ties with any national administration, making them "truly independent".⁴¹⁵

As well as being unable to meet all the normal standards of a "classical" career civil service, despite putting into force the Staff Regulations, it was also understood in the Commission that the highest posts in the service could not be regarded as normal parts of an official's career. This was largely so because they were limited in number, but also because it seemed widely accepted that the more responsible positions were bound to be filled with some reference to political views, nationality, or other factors besides merit or technical ability.⁴¹⁶ As Coombes pointed out, however, even in most national civil services it would be next to impossible to distinguish between politics and administration at these levels and access to them could not be based purely on "objective" criteria.⁴¹⁷

Between 1958 and 1966 nearly sixty appointments were made to the rank of Director in the Commission. Of these Directors, less than a quarter would be promoted from a lower rank within the Commission. The survey carried out by Coombes discovered that many of them had come from a Commissioner's cabinet rather than from a Directorate General.⁴¹⁸ When compared with a career civil service, promotion to the highest grades should be a reasonable possibility. In the

⁴¹⁵ Coombes (1970) p. 150.

⁴¹⁶ Emile Noël has here disputed the reference to "political views" which Coombes, from his study, has claimed to have been a consideration taken into account during the appointment procedures.

⁴¹⁷ Coombes (1970) p. 161-162.

⁴¹⁸ Coombes (1970) p. 146.

administrative services of the Commission this was not yet the case.

4.4 The European Commission - a comparison with other "similar" bodies

The European Commission was a new and unique organisation when it was set up in 1958. Ever since, scholars have tried to place it into different categories of organisations and secretariats. It might also have fitted into several of these different categories, but only partly. The European Commission has been tried characterised as a new form of bureaucratic body, as a so-called "European Civil Service", and it has been tried classified within the group of international secretariats. Furthermore, it has been widely compared to its "forerunner", the High Authority of the ECSC.

One of the main characteristics of the High Authority was the fact that it was an executive body with executive powers of its own with regard to the coal and steel industries. The High Authority was not an international organisation as one used to know them but rather represented the merging of the member governments' sovereignties in its participating field. Hence, there were no delegations from the member States to the High Authority and the High Authority needed to have a direct access to the Ministers concerned.⁴¹⁹ Another very important aspect of the High Authority was its right to "impose fines or periodic penalty payments on undertakings",⁴²⁰ as well as imposing levies directly on enterprises in the member States.⁴²¹ Such rights were, and still are, usually thought of in relation to national Governments or other national administrations. The transfer of sovereignty from the member States to the High Authority was in fact already agreed and the Treaty

⁴¹⁹ Spierenburg and Poidevin (1994) p. 47.

⁴²⁰ Article 47 ECSC: "The High Authority may impose fines or periodic penalty payments on undertakings which evade their obligations under decisions taken in pursuance of this Article or which knowingly furnish false information."

⁴²¹ Article 49 ECSC: "The High Authority is empowered to procure the funds it requires to carry out its tasks:

- by imposing levies on the production of coal and steel;
- by contracting loans."

characteristically says throughout "The High Authority may" and "The High Authority shall". Very rarely does it add "after consultation with" which became more the case for the Commission in the Treaty of Rome. The ECSC Treaty was, further, very specific and technical compared to the EEC Treaty which was much more general.

The European Commission, on the other hand, might be said to be more of an administrative body. This was certainly the way it developed after its first few years in operation. Its role was to take initiatives and to develop policies. The executive role, however, was always going to be kept at a national level. In the beginning of its existence the Commission operated in many ways as a political body, in particular through its efforts in implementing the Common Market and the common policies, as well as in negotiations over the Free Trade Area and with other third countries.

Jean Siotis expressed, in his article, a rather critical view on the comparison of the European Commission with an international secretariat. However, one of the comparisons that one has not seen too often, and which might be argued could be the most correct one, is the comparison with the federal ministries in Germany.⁴²² One of the reasons for this is the fact that the President of the Commission, Walter Hallstein, not only played a major part in setting-up the European Commission, but earlier also practically set up the first Foreign Ministry of Germany in 1951.⁴²³ Another reason, as defined by Cassese and della Cananea, was the fact that "the Commission was conceived by its President as an independent body with an extensive and highly informed administration and with a well-defined organizational

⁴²² Yearbook of European Administrative History 1992, p. 86.

⁴²³ See 2.2 of this chapter. The administrations of the German ministries are divided into four hierarchical levels. At the top is the Executive which consists of the minister and usually two state secretaries. Directly under comes the Departments with political civil servants in charge. The two non-political levels are the Sub-departments and the Sections where civil servants from the Higher Service occupy the top. Conradt (1989) *The German Polity* (London, New York: Longman, Fourth Edition) p. 175-179.

design".⁴²⁴

David Coombes, on the other hand, found it impossible to fit the Commission into any group of formal powers or other existing bodies such as international secretariats and federal governments. The Commission, he argued, had been assigned formal powers and characteristics in an unprecedented way. It performed a variety of functions in the political system of the Community, and in some aspects it was also expected to act as a bureaucracy and have essential characteristics of an implementative, "goal-seeking" organisation. In other aspects it had to behave as if constituting the political leadership of the Community, acting as an initiating and "goal-setting" body. Hence, the Commission reflected both political and bureaucratic characteristics.

Jean Siotis argued that, as the Commission was independent of other national and international authorities, he had great objections in using the term "European Secretariat" in describing the Commission.⁴²⁵ In discussions with Community officials, Siotis also experienced objections to the use of the term "Secretariat" in describing the High Authority and the Commission. As he argued, the Commission had implicitly been recognised as the spokesman for the "Community interests" as opposed to national interests which were expressed in the Council of Ministers. One may, however, question the "absolute" independence of the Commission, as well as that of the High Authority, in view of the fluctuations of their membership as a result of the internal political evolution of the member States.⁴²⁶ What is hereby understood is that as the Commissioners are appointed by common accord among the national Governments, the chances are that a Commissioner acting too much against his own government would not be renominated for a new term.⁴²⁷ Although this

⁴²⁴ Yearbook of European Administrative History 1992, p. 86.

⁴²⁵ Siotis (1964) p. 228.

⁴²⁶ Siotis (1964) p. 229.

⁴²⁷ Article 158 EEC: "The members of the Commission shall be appointed by common accord of the Governments of the Member States. Their term of office shall be four years. It shall be renewable."

is the way the national Governments can perform some kind of control over "their" Commissioner, despite the fact that they are supposedly acting independently.

Siotis, further, mentioned other reasons for why the Commission could not be classified as a "Secretariat". Firstly, it was because it was an institution "based on the original concept of an independent supranational executive body, taking decisions by a majority vote", having the right to exercise its powers outside the national frontiers of its member States. Another reason being the ultimate objective of attaining a "complete political unification, or a federation of the member States". Lastly, the fact that the institutions of the EEC did not form "a regional system of international organisations" in what he calls a "traditional" sense of the term, but rather were "an expression of a Community of nations". On the other hand, he argued that: "If we admit that international Secretariats are institutions which do assume executive functions, international in their nature but extending on certain occasions into the field of domestic jurisdiction, then we may consider that the EEC Commission, and the High Authority, considered as a whole with their respective administrations, are international Secretariats."⁴²⁸

By looking at the wording of the Treaty, though, it does suggest the powers of the Commission do go further than those of other international Secretariats. In Article 155 it was stated that the Commission shall "ensure the application of the provisions of this Treaty and of the provisions enacted by the institutions of the Community in pursuance thereof".⁴²⁹ Comparing this with the Secretary-General of the United Nations, Article 99 of its Charter⁴³⁰ recognises its right of "ensuring" but not of "assuming responsibility for", as was the case with the High

⁴²⁸ Siotis (1964) p. 230-231.

⁴²⁹ In the Treaty of the ECSC it was said about the High Authority that it was "responsible for ensuring the achievement of the purpose stated in this Treaty in accordance with the terms thereof".

⁴³⁰ Article 99 of the Charter of the United Nations: "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."

During his time as the first President of the European Commission, Walter Hallstein argued that discussions about whether it was correct to use the term "executive" to describe the Commission, or if another term would have been more appropriate, seemed a question of pure terminology, practically without any interest.⁴³² This was a view which was to a large extent supported by the former Executive Secretary of the European Commission, Emile Noël. According to the latter one must rather characterise the Commission as a political leadership more than anything else during its first years in operation. The executive work at this time was limited, but, on the other hand, there were real political discussions taking place among the Commissioners in their efforts to build common policies, as well as in negotiations with third countries and organisations.⁴³³

5. COORDINATION OF THE THREE EUROPEAN COMMUNITIES

5.1 The Coordination of the three European Executives

In a Resolution of the European Parliamentary Assembly on 27 June 1958 it was stated that "the three European Communities stem from the same political idea and constitute still three different elements in a unitary construction".⁴³⁴ One will be able to observe a certain vision for the future which also the Treaty of Rome formally indicated. With the establishment of the EEC and Euratom in 1958 the Common Assembly and the Court of Justice were instituted as common to the three Communities. From 18 March 1958 this body has been referred to as the European Parliamentary Assembly. The EEC and Euratom had in common the Economic and

⁴³¹ Siotis (1964) p. 237.

⁴³² Hallstein (1970) p. 74.

⁴³³ Views expressed in a conversation with Emile Noël in Paris on 12 December 1994.

⁴³⁴ EEC - First general Report 1958, p. 28.

In the First General Report by the Commission, it was written that "[O]ne of the outstanding features of the Community is the major role accorded to the common Institutions; in the last resort the success of the Community will depend on the effectiveness of the body of Institutions."⁴³⁶ The institutions of the Community were considered as crucial to the realisation of tasks entrusted to it. In the First General Report, therefore, the institutional apparatus was outlined, covering "the creation and early activities of the institutions and organs; the relations between the institutions and the other Communities as they appear in the light of the first month's work, and the material circumstances of the start, location and financing".⁴³⁷ The Report further pointed out that the Commission, with its duty to build up an entirely new administration, had "taken the greatest care in the selection of its personnel". It also showed itself grateful towards the High Authority which had been generous in its assistance and the cooperation that had been established had not only helped "to ensure unity of policy but also to avoid duplication of effort".⁴³⁸

Article 232 of the Treaty instituting the European Economic Community stipulated that its dispositions would not affect those instituting the ECSC in relation to the rights and obligations of the member States, the powers of the ECSC institutions, nor the rules laid down concerning the functioning of the common market of coal and steel. The same article also lays down that the dispositions of the Treaty would not depart from the stipulations of the Euratom Treaty. Thus, the three communities would be distinct judicial entities. One must also understand that the texts signed in Rome did not anticipate any organic link between the High Authority and the new European Commission. However, from the start, it was set out as an aim that the presidents of the three Communities should meet regularly "for the

⁴³⁵ The Economical and Social Committee had 101 members who were appointed by the Council of Ministers on 22 April 1958.

⁴³⁶ EEC - First General Report 1958, p. 28.

⁴³⁷ EEC - First General Report 1958, p. 17.

⁴³⁸ EEC - First General Report 1958, p. 11-12.

purpose of comparing and harmonizing policies, and of avoiding duplication of administrative and technical work". Their first meeting took place on 14 January 1958, discussing the "fundamental necessity and practical requirements for effective cooperation among the three Executives" and deciding to "meet at regular intervals".⁴³⁹ There would also be established a committee formed by members of the three executive authorities that would be in charge of general problems of collaboration.⁴⁴⁰ The "Meeting of the Presidents" would, furthermore, assure an overall coordination of the inter-executive groups that had been set up, by mutual information and a coordination of key policies.⁴⁴¹

Conscious of the fundamental unity of the European Community, and determined to solve in a practical way the separation as a result of the Treaties, the three executives had, since the setting-up of the two European Commissions, established a regular contact to examine measures to be taken so as to guarantee the closest possible cooperation between them.

Thus the High Authority and the two European Commissions were convinced by, first of all, instituting periodic meetings of their presidents. The Presidents of the two European Commissions were appointed at the meeting of the six member Governments in Paris on 6-7 January 1958.⁴⁴² According to the First General Report 1958 of the EEC, as well as the Seventh General Report 1959 of the ECSC, one meeting between the three Presidents had already taken place before the Commissions of EEC and Euratom had been formally established, during the week between 7 and 14 January 1958. The idea was to institutionalise these meetings one way or the other in the future: "Accordingly, having recorded their agreement, in the course of a thorough discussion of the matter on January 14, 1958, as to the fundamental necessity and practical requirements for effective cooperation among the

⁴³⁹ ECSC - Seventh General Report 1959, p. 32.

⁴⁴⁰ ECSC - Seventh General Report 1959, p. 32.

⁴⁴¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁴² See 1. INTRODUCTION above.

three Executives, the President of the High Authority of the E.C.S.C., the President of the Commission of the European Economic Community and the President of the Commission of the European Atomic Energy Community decided to meet at regular intervals."⁴⁴³ This was also something that had been particularly strived for by the High Authority which had "called for 'wide-ranging presidential meetings' to discuss inter-institutional problems, the free trade zone and other issues".⁴⁴⁴ During these meetings the three presidents examined all problems of common interest, concerning the general policies of the Communities. When seen as necessary and appropriate, they would also be accompanied by other members of the executives. Agreements of holding regular meetings between the three presidents were taken on 6 October 1958.⁴⁴⁵

Furthermore, the three Executives agreed upon constituting inter-executive groups consisting of one or more members of each institution, depending on the need. This procedure was contemplated on a provisional basis, by the following questions: external relations, economic and financial policies, energy policies, social policies, transport, and, lastly, press and information.⁴⁴⁶ Within these groups, the members of the executives conducted a permanent examination of the problems, the projects and decisions concerning the three institutions in common, which were of interest to the later development of the Community. Furthermore, with the idea of pursuing the study of the channels of cooperation instituted between them, the executives set up a committee within which each one would delegate one or two of its members. The task of this committee was to follow constantly the execution of measures already taken and elaborate propositions for new measures to be taken. Despite these procedures, they were not to have any effect on what concerned each executive, the accomplishment of their assignments, or their own responsibilities.

⁴⁴³ ECSC - Seventh General Report 1959, p. 32.

⁴⁴⁴ Spierenburg and Poidevin (1994) p. 382.

⁴⁴⁵ Spierenburg and Poidevin (1994) *ibidem*. These meetings were to take place every second Monday of each month. Three out of four would be held in Brussels and the fourth in Luxembourg.

⁴⁴⁶ EEC - First General Report 1958, p. 30.

The responsibility taken by the European Commission was to become characteristic of the whole inter-executive cooperation, despite the fact that it was among the executives of the EEC and Euratom that the least enthusiasm was to be found for having a formalised cooperation. The High Authority, on the other hand, as the senior of the three executives, was pushing for cooperation as an attempt to keep its position and prestige in this new competition. There was also another dilemma concerning the setting-up of inter-executive groups, namely the fact that both the European Commission as well as the High Authority were anxious to maintain their own autonomy.⁴⁴⁷ Nevertheless, the High Authority claimed to have "been hard at work ever since the beginning of the transition period for the introduction of the General Common Market, trying to fix upon the best forms of co-operation with the Institutions of the new Communities. [...] for the purpose of comparing and harmonizing policies, and of avoiding duplication of administrative and technical work."⁴⁴⁸

The problem of coordination between the three executives was chiefly a problem of uniting action and policies. If one had been limited by taking measures over the administrative plan only, this essential objective would not have been touched. It was at the level of the executives themselves that one had to assure the closest cooperation possible.

5.2 Administrative Cooperation - Common Services of the European Communities

In such a spirit, the High Authority facilitated the initial work of the new Commissions by putting at their disposal both personnel and material. This assistance was particularly appreciated by the European Commission: "[...] the High Authority has aided the early work of the two new Commissions by placing at their disposal a considerable number of staff and quantities of material. Such assistance has been particularly valuable to the European Commission, which takes this opportunity of

⁴⁴⁷ Spierenburg and Poidevin (1994) p. 381-383.

⁴⁴⁸ ECSC - Seventh General Report 1959, p. 32.

expressing its appreciation."⁴⁴⁹ It ought here to be mentioned the fact that personalities like Emile Noël would strongly play down the amount of aid of material and personal character received from the High Authority at any level during the early period, although he recognizes the fact that both material and financial support had been given by the High Authority, and gratefully received by the two new Commissions. The small number of personnel received from the High Authority was largely due to the wishes of Walter Hallstein.⁴⁵⁰ Agreement was, however, made at the very beginning of 1958 between the three European Executives to establish three common services.

It was decided from the beginning to publish one single "*Journal Officiel*" for the three Communities, administered from a common office. This started in April 1958 and the office was what had earlier been established as the Publishing Service of the High Authority. This office also examined candidates for the positions of interpreters and secretaries, the institution of a common administrative inter-community charged with examining the common problems concerning regulations, payment, insurance, and so forth, and collaboration at the level of civil servants concerning budgetary matters. In addition, the two Commissions also harmonised their dispositions concerning classification of personnel and, where possible, those concerning payment, with those used in the ECSC.

Other measures were further taken that would see a start of enforcement: the establishment of common regulations for all the officials of the Communities; a common treatment of recruiting matters, a common administration for planning and insurance, the creation of a common office for interpreters, as well as putting together the services in charge of the following tasks: distribution of publications,

⁴⁴⁹ EEC - First General Report 1958, p. 29.

⁴⁵⁰ Views expressed by Emile Noël in a conversation in Paris on 12 December 1994. Worth mentioning in this respect are certain insinuations made by Spierenburg and Poidevin about a great number of High Authority officials leaving for Brussels during 1958: "What worried the High Authority most was the number of employees who were leaving for Brussels." Spierenburg and Poidevin (1994) p. 379.

addresses and data processing, purchase, storage, and library. As suggested by the Parliamentary Assembly in its resolution of June 1958, the European Commission inspired a certain dynamic conception of the institutional structure in order to obtain the maximum coordination between the three Communities, running all possibilities offered by the Treaties. In spite of trying to obtain an organic unity of the three institutions, it further underlined the problems caused by the absence of a common seat which it would always be difficult, if not practically impossible to achieve.

During the early period of the operation of the European Commission, the High Authority was more than willing to assist by making staff available as well as expertise. The Commission itself, however, was more reserved towards these offers. President Hallstein accepted a certain amount of technical support in the form of interpreters and other technicians. According to former Executive Secretary Emile Noël it was a conscious decision taken by President Hallstein to assure an independent elaboration of the policies of the EEC, which after all had quite different characteristics from the other two Communities.⁴⁵¹

Some officials were, however, appointed from the High Authority. These were mainly appointed to the middle and lower levels. As Emile Noël recalls, none of the Directors General, nor the Commissioners, had formerly served with the High Authority, except for the Director General of Common Legal Service EEC wing.⁴⁵² At this level President Hallstein particularly wanted to recruit "new" people. The Commission was to represent a totally new concept and it was felt as important that they got to "do it their own way" as much as possible. In this way the novelty of the European Commission was emphasised, as was its independence from the other European Communities and the member States. The appointments that were made from the High Authority were all made on a personal basis without any

⁴⁵¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁵² From the writing of Spierenburg and Poidevin this seems to have been the Frenchman Michel Gaudet, who was "one of the two co-directors of the Legal Service. [...] given the task of setting up the EEC wing of the Joint Legal Service". Spierenburg and Poidevin (1994) p. 380.

political considerations taken into account. Furthermore, there was no rush of officials from the High Authority seeking to work for the European Commission. The Civil Servants who were engaged from the High Authority were chosen on an individual basis, and in positions corresponding to their abilities in the new hierarchy. They were not, however, as might have been wished by the High Authority, put in charge of services or appointed as higher civil servants.⁴⁵³

Concerning the plan of the sectors, cooperation was developed constantly. This was vital for three essential reasons: to permit and facilitate unity of policies between the executives, to manifest to the exterior a unity between the Communities, and finally to use in the most rational way the means set up for them.

After the Commissioners had been appointed and the structure of the Commission administration was more or less developed, an official Spokesman was appointed with a small staff, to keep important links with the press. Further, the Commission shared with the Executives of the other two Communities, the ECSC and Euratom, the responsibility for the three Common Services.⁴⁵⁴ Each of the Common Services were placed under the authority of an inter-executive group formed by three Commissioners appointed by each of the three Executives. These common services were the Common Legal Service, the Statistical Service of the European Communities, and the Common Service for Press and Information. The Common Legal Service, which was put under the leadership of a Board of Directors, with one Director General for each Community, was to "consist of three sections representing the three Communities". The legal experts for this Service were appointed by common assent of the three Executives. The number of legal experts on the European Communities was, however, rather limited at this time, which made them particularly sought after. The main task of the Common Legal Service was to assure a regular cooperation between the three Communities concerning interpretations, as well as implementation of analogous arrangements existing in the

⁴⁵³ Yearbook of European Administrative History 1992, p. 145.

⁴⁵⁴ Coombes (1970) p. 124.

three treaties. The Statistical Service was set up to be "working under the Director of the High Authority's original Statistics Division".⁴⁵⁵ Its field of study had been broadened to new areas covered by the two new Communities, and, in Emile Noël's view, it was the most "authentic" common service.⁴⁵⁶ The organisation of this Service, which became known as the Statistics Office and had its office in Luxembourg, was agreed upon by the end of 1959.⁴⁵⁷

The third of the three Common Services of the European Communities was the Common Service for Press and Information. Its internal organisation was still under process of being decided on at the beginning of 1959, although a number of agreements had already been reached concerning the coordination of the various Press and Information Offices in the member States throughout 1958. As stated in the Seventh General Report of the ECSC, there were two basic requirements concerning the organisation of this Service. The first was that "each Executive should have a spokesman", answerable only to "its" Executive, and, secondly, that "the functional and administrative unity of the Information Service of the European Communities must be preserved".⁴⁵⁸ By the time of the publishing of the Eighth General Report of the ECSC in 1960 it becomes clear that the "structure and working programme" for the Press and Information Service had still not been decided on. This, despite the fact that the High Authority had, already in February 1958, "provisionally made the facilities of its own Information Service available to the two new Communities".⁴⁵⁹ In Emile Noël's view, this Common Service only played a limited role during the early years of the EEC and the European Commission.

Three inter-executive groups, which each had three members, were set up to

⁴⁵⁵ ECSC - Seventh General Report 1959, p. 34.

⁴⁵⁶ Views expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁵⁷ ECSC - Eight General Report 1960, p. 41.

⁴⁵⁸ ECSC - Seventh General Report 1959, p. 34.

⁴⁵⁹ ECSC - Eight General Report 1960, p. 42.

coordinate the activities of the Common Services. Jean Rey, the Commissioner for External Relations, was put in charge of the Legal Service inter-executive group. As Emile Noël has pointed out, however, apart from the inter-executive groups for legal affairs, administrative arrangements and energy, most of these inter-executive groups existed only on paper. Within the Legal Service Group the Commission received some help from the High Authority in terms of counsellors with knowledge on Community law, some of whom had taken part in the Treaty negotiations. There was at the time a lack of people with this type of knowledge which is why assistance had to be sought from the High Authority. They further worked together on common rules in the Treaties trying to develop a common interpretation. However, as has been pointed out before, there was a clear resistance from President Hallstein to any further involvement from the High Authority, certainly at the political level.⁴⁶⁰

Among common services of the three communities already in operation from the start was a uniform procedure for the appointment of personnel in middle and lower grades, as well as for translators and interpreters. This was an attempt to avoid competition. There existed in the beginning some kind of common pool for interpreters as this need was quite a new one. There was a great need for developing training of interpreters to work with, until then, unusual combinations of languages, like for example Italian to Dutch. Many were recruited from other international organisations like the Council of Europe, OEEC and the United Nations. Nevertheless, as Emile Noël has pointed out, the kind of need the European Commission created was a new one.⁴⁶¹ An expert group was created within the ECSC but was presided later by the European Commission, which was mostly in charge of the detailed studies, while competent civil servants of the High Authority and Euratom were called upon to participate.

⁴⁶⁰ Views expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁶¹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

5.3 The Seat of the Institutions

According to Article 216 of the Treaty of Rome "the seat of the institutions of the Community shall be determined by common accord of the Governments of the Member States". However, this has proved to be such a controversial issue that not until the Edinburgh European Summit of 11-12 December 1992 was any such decision taken.⁴⁶²

From when the Treaty of Paris was signed on 18 April 1951 until long after the EEC and Euratom were set up in 1958, discussions were going on in the different capitals as to where the institutions of the European Communities ought to be placed. Some argued for the creation of a "European District",⁴⁶³ others for the institutions to be spread out in various cities. Some wanted the cities to be small, others thought they ought to be big. When the ECSC was set up in 1952, the seats chosen were only provisional but nevertheless remained for as long as the ECSC existed as a separate community, with the High Authority and the Court of Justice established in Luxembourg and the Common Assembly in Strasbourg. The same situation happened to the two new Communities in 1958 when the two Commissions were set up in Brussels.

The terms of the decision reached between the foreign ministers of the six countries at their meeting in Paris on 6 and 7 January 1958 aimed at a gathering together in the same place of all the institutions of the Europe of the Six. In a Note from the Ministry of Foreign Affairs in Paris it was confirmed the indications from Germany and the Benelux countries to accept Brussels as the seat of the executive bodies of the EEC and Euratom. The ECSC would remain in Luxembourg and an

⁴⁶² European Report Document, Supplement to European Report no. 1821, December 16, 1992. Edinburgh European Summit, December 11-12, 1992, Annex to Part A: Decision taken by common agreement between the representatives of the governments of the Member States on the location of the seats of the institutions and of certain bodies and departments of the European Communities. It was "agreed that the current situation would continue on a permanent basis".

⁴⁶³ Monnet (1978) p. 369.

eventual Investment Bank was desired set up in Milan.⁴⁶⁴ The choice of place, however, was postponed until their next meeting on 1 June 1958. Several consultations had been carried out in preparing for the choice. In the meantime, the Councils of Ministers held meetings set up by their presidents, the Parliamentary Assembly sat in Strasbourg, and the two Commissions received the recommendation for having their meetings at the Val-Duchesse in Brussels, or in Luxembourg, according to practical reasons. The arrangements thus agreed were carried out until the new meeting by the foreign ministers in Brussels on 1 July 1958.⁴⁶⁵

The European Commission estimated that, to conform to the recommendations of the governments, it could agree on meeting alternatively in Brussels and in Luxembourg. For the creation of common services for the three Communities, the Commission had to resort to the services of the High Authority in Luxembourg. The administration of the European Commission, in terms of organisation, started its work mainly in Brussels. The Council of Ministers met generally in Brussels where they were also to set up the services of the European Investment Bank. Despite long hours of discussions and negotiations, the conference by the foreign ministers on 1 June 1958 did not solve the problem of location. The European Commission was brought to take the consequences of this situation. The practical arrangements taken earlier concerning installation of its services in Brussels were not altered. In what concerns the meetings of the Commission, a decision was made to hold these where the services had been installed, for obvious practical reasons. As was put by the President of the Commission, Walter Hallstein, in his Statement to the European Parliamentary Assembly in Strasbourg on 20 March 1958: "failure to decide on the seat of the institutions of the Community not only causes great inconvenience and waste of energy but is also prejudicial to the work". The absence of a permanent place for the new Commission in the beginning was considered as putting the creation of a rational organisation and efficiency of action at risk. During a session

⁴⁶⁴ Ministry of Foreign Affairs, Dir. Gen. Pol. Europe, Paris 3 January 1958. EUROPE 1944-1960, COPIE P, Généralités (Questions Internationales), Vol.: 173-174, Vues: 630. From the Archives of the Ministry of Foreign Affairs in Paris.

⁴⁶⁵ EEC - First General Report 1958, pp. 35-36.

of the Assemblée Nationale in France in November 1959 it was argued by Prime Minister Michel Debré that "a complete or partial gathering (of the institutions) would permit a better functioning of these international administrations and, therefore, certainly a better European cooperation".⁴⁶⁶

The importance of establishing a common seat for the Community institutions had to do with the fact that, the founding fathers of the ECSC, as much as the founders of the EEC and Euratom, believed that they would all one day belong to the same European Community that would cover all areas of society. It was therefore important to prepare for this already from the start. Furthermore, there were national, as well as technical, considerations to take into account. National considerations would always have to be respected, and technical considerations had to be respected to ensure a good functioning of the Community as well as a quick start of the institutions. Further, there was "the importance of uniting the institutions on the same place to avoid them breaking up",⁴⁶⁷ and avoiding the elimination of psychological and political obstacles. There was also the material factor to bear in mind that "several different locations means a loss of time, money and efficiency, materially as well as politically".⁴⁶⁸ Luxembourg, however, would veto the departure of the ECSC which had already been in operation for more than five years, bringing with it employment, capital and even prestige to the small country. From

⁴⁶⁶ Extrait du compte rendu intégral de la séance du 5 novembre 1959 de l'Assemblée Nationale Française (Doc. 1067). EUROPE 1944-1960, Généralités, Copie P, Vol.: 172, Vues: 485. From the Archives of the Ministry of Foreign Affairs, Paris. Own translation. *"un regroupement total ou partiel permettrait un meilleur fonctionnement de ces administrations internationales et, de ce fait, certainement une meilleure coopération européenne."* Ibidem.

⁴⁶⁷ Aide-memoire sur les discussions des six Ministres des Affaires Etrangères relatives au siège de la CECA. Le 29/7/52. EUROPE 1944-1960, Copie P, Généralités (Questions Internationales), Vol.: 173-174, Vues: 630. From the Archives of the Ministry of Foreign Affairs in Paris.

⁴⁶⁸ Ambassade de France en Belgique, Bruxelles 2 janvier 1957. From Ambassador Raymond Bosquet to Minister of Foreign Affairs M. Christian Pineau. According to Spierenburg and Poidevin this was a known fact. However, the dilemma was that having the three Communities in the little Grand Duchy created fear among its inhabitants for losing their identity. Spierenburg and Poidevin (1994) p. 245.

the French Ministry of Foreign Affairs in July 1957 it was pointed out that a decentralisation of the institutions would share them between the member States which would satisfy the national considerations. On the other hand, a centralisation of the institutions could have a federalising effect on the Community as a whole.⁴⁶⁹ Concerning the discussion above on the establishment of the Common Services of the three European Communities, the High Authority stressed the fact that "the organization of the work of the European Executives is encumbered by an additional burden through the absence of a single seat".⁴⁷⁰ In an earlier Report the High Authority had already emphasized "that the absence of a single seat has very considerably restricted the scope for setting up common services".⁴⁷¹ It had a decentralizing effect on the Communities, and even the monthly meetings of the Executives were to prove impossible to carry out.

There was a common opinion, which was shared by President Hallstein, where the three Communities were regarded as "branches of one and the same stem". An internal unity among them, achieved by the common services, was therefore seen as crucial. However, it was not felt as necessary, especially by the Commission at an initial stage, to determine the final manner in which the common services would be administratively fit together, or even how the hierarchy should be established. These were matters that would have to be decided on with time and experience. The Commission would also do its best to avoid giving the impression of taking a position on the matter. To the national governments, on the other hand, this was more of an important national issue concerning the renouncing of sovereignty and autonomy. Until common headquarters would be set up, the new executive bodies had their own spokesmen, each with a small staff.

⁴⁶⁹ Ministry for Foreign Affairs, Paris 30 July 1957. Note pour le President. EUROPE 1944-1960, Copie P, Généralités (Questions Internationales), Vol.: 173-174, Vues: 630. From the Archives of the Ministry of Foreign Affairs in Paris.

⁴⁷⁰ ECSC - Eight General Report 1960, p. 40.

⁴⁷¹ ECSC - Seventh General Report 1959, p. 36.

6. ESTABLISHING INTERNAL ADMINISTRATIVE STRUCTURES AND THE "STATUT DE SERVICE"

6.1 The "Statut de Service"

Although creating administrative structures was not regarded as a main priority in the early European Commission, an increasing number of officials made a "Statut de Service", or Staff Regulations as they will be called, inevitable. The Treaty of Rome gave no instructions or guidelines about the internal organisation of the Commission, nor about recruitment and employment of staff.⁴⁷² Therefore, during the first few years of the Commission, Staff Regulations were not really among the main tasks of the Commissioners. At that time they had more than enough work in ensuring the successful opening of the Common Market and in building and implementing common policies, as well as making sure the independence of the Commission administration was maintained. Among the people who came to the Commission in 1958 there was a real sense of adventure and of believing in what they were doing, despite the fact that the Commission administration had no real careers and no job security. The fact that the Commission operated for four years without any Staff Regulations might, according to Emile Noël, have had more of a positive effect on the administration and its performance than anything else. This because the officials recruited were committed people working for a cause with no status and no guarantee. They were appointed according to some kind of European "spirit". However, with a future enlargement in mind, especially a British accession, it became important that the Staff Regulations were in place and operating. Only then would it be possible to recruit a large number of officials in a very short time to an already existing and operating Commission administration. Furthermore, there was a growing uncertainty as to the status of the officials, as well as difficulties regarding the payment of officials and the securing of their career prospects. This uncertainty was to a large extent created by the national representatives, reluctant to accept the level of salaries and benefits that were in force in the ECSC, and wanting to be less generous for the two new Communities. Therefore, to the dedicated "European" the

⁴⁷² Coombes (1970) p. 122.

formulation and enactment in the EEC of the Staff Regulations was considered as having a great psychological and legal importance. It was seen as an essential step towards European integration as well as an escape from the uncertainties of the early years. As well one could say that the Staff Regulations did help to build a real European Civil Service by creating a system of independent careers in the Commissions.⁴⁷³

The Staff Regulations which were set up in the end provided for a Staff Committee⁴⁷⁴ which would represent the interests of the personnel and ensure a permanent contact between administrative and staff sides. This Committee had the power to bring up any difficulty of general significance relating to the interpretation and application of the Staff Regulations and it could be consulted by the authority on any such difficulty. Each institution had its own Staff Committee.

According to David Coombes, it was the uncertainty regarding the future role of the Community institutions which created the problem with applying the Staff Regulations. Establishing a permanent, independent career service on the same broad principles as those laid down in the Regulations of the ECSC, he maintained, had important political implications. It was feared that the new Regulations would be supporting the independence of the Commission, in that officials would not depend on their national governments for promotion or for future careers. The calls for the speeding up of the process came thus from those in favour of the application of the Treaty and strengthening the authority of the Commission.⁴⁷⁵

The Staff Regulations followed closely the French "*Statut des Fonctionnaires*" in its provisions regarding discipline and competitions for posts. Moreover, features common to all or most of the national staff regulations were incorporated along with

⁴⁷³ Views expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁷⁴ Official Journal of the European Communities, Regulation No 31 (EEC), 11 (EAEC), Article 9, section 1a.

⁴⁷⁵ Coombes (1970) p. 135.

the new ones.⁴⁷⁶ Another French aspect of the Staff Regulations was the division of grades into separate "*carrières*", which meant that within each "*carrière*" the official could be promoted without having to take on any new functions.⁴⁷⁷

The Staff Regulations of the EEC had many similarities with the equivalent Regulations of the ECSC and the High Authority which had been adopted in 1956. Although the Commission operated for four years without its own Staff Regulations, many of the rules and regulations of the High Authority were followed nevertheless. This was done out of practical reasons as adopting a system that was too different would have caused problems. As Emile Noël has pointed out, it was important to compromise between the different delegations, with the two Commissions, and with the staff. Therefore, the procedures followed up to 1962, and the regulations adopted thereafter were very much "in the spirit of" the High Authority.⁴⁷⁸

In the Staff Regulations of the ECSC, Article 1, the word "supranational" was used to characterise the civil servants of its institutions. In the process of creating Staff Regulations for the EEC and Commission, the latter was unanimous in its wish for using the first sentence of Article 1 from the ECSC Regulations: "The members of the personnel of the European Coal and Steel Community are supranational civil servants."⁴⁷⁹ The EEC Commission wanted this way to define the character of the functions, and in consequence, the rights and obligations resulting from them. Despite the fact that the EEC was not a supranational organisation, or at least had omitted that word from its treaty, the Commission proposal stated: "*La Commission unanime souhaite expressément que la 1ère phrase de l'article 1 du Statut CECA soit maintenue, les termes de fonctionnaire supranational qui y figurent lui paraissant*

⁴⁷⁶ Coombes (1970) p. 135.

⁴⁷⁷ Coombes (1970) p. 138.

⁴⁷⁸ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁴⁷⁹ Index alphabétique des principaux termes et locutions figurant dans le Projet de Statut de Bruxelles. CEAB 12/799. Statut CECA Article 1 "*Les membres du personnel de la Communauté Européenne du Charbon et de l'Acier sont des fonctionnaires supranationaux.*" Own translation.

essentiels pour définir le caractère des fonctions et, par voie de conséquence, les droits et obligations qui en résultent."⁴⁸⁰ One difference, however, which seems to be consistent, is the term used to describe the staff of the institutions. In the ECSC Staff Regulations the French word "*agent*" is used. This is a general term and means simply "official". In the EEC Regulations, however, they used the term "*fonctionnaire*" which generally means "civil servant", but can also mean "government official" or "state employee".

Article 206 of the Treaty of Rome stated: "The account of all revenues and expenditures contained in the budget shall be examined by a supervisory committee composed of auditors whose independence can be fully guaranteed [...]. Every year, when the financial year has ended, the supervisory committee shall draw up a report, by a majority vote of its members. The Council shall by qualified majority vote give the Commission a discharge in respect of the implementation of the budget. It shall communicate its decision to the Assembly." In a meeting of COREPER on 29-30 July 1958, the Committee acknowledged that the members of the supervisory committee referred to in Article 206 ought to be independent personalities, both from the Institutions and from the Member State Governments, and that they should form a real Community body. Thus, the members of the committee would become officials of the Community while exercising their functions.⁴⁸¹

At an Intergovernmental Conference for the EEC and Euratom in Brussels on

⁴⁸⁰ "The Commission unanimously wishes especially for the first sentence of Article 1 of the ECSC Staff Regulations to remain, as the expression supranational civil servant seems essential in defining the characteristics of functions and, as a consequence, the rights and obligations resulting from these." Own translation. Index alphabétique des principaux termes et locutions figurant dans le Projet de Statut de Bruxelles. CEAB 12/799. This document has no date, but the document following named "*Note au Personnel. Concerne: Texte révisé du Statut du Personnel - Addendum II*" was dated Luxembourg, 21 May 1962.

⁴⁸¹ Communauté Economique Européenne, Le Conseil, Communauté Européenne de l'Energie Atomique, Le Conseil. Bruxelles, le 1^{er} août 1958, 789/58(extrait), Annexe I. Extrait du Procès-verbal de la vingtième réunion du Comité des Représentants Permanents tenue à Bruxelles, les 29 et 30 juillet 1958 approuvé au cours de sa 22^{ème} réunion le 3 septembre 1958. CEAB 1, No. 475.

2 March 1957, the German delegation proposed that Staff Regulations should be drawn up for the European Communities.⁴⁸² The German delegation wished for the Staff Regulations to be established by a common agreement between the Governments of the member States. Further, a Staff Committee ought to be established, which would approve all nominations of officials of the Community. According to the German proposal the Staff Committee would consist of one representative from each member state as well as one representative from each of the institutions of the Community. Finally, the German delegation proposed that the Staff Regulations should come into force at the same time as the Treaty of Rome. As this took place shortly before the Treaties were signed in Rome on 25 March 1957, the German timetable was revealed as too ambitious.⁴⁸³ During their session of 7-8 October 1958, the Councils of the EEC and Euratom gave the necessary instructions conforming with orders given in Article 212 of the Treaty, which would be the Regulations of the civil servants and a system applicable to other officials of the Communities.

On 24 November 1958, the French delegation proposed that the establishment of a mandate to be given to the Working Group "*Statute*" would first of all mean deciding if the Group should take as a basis for its discussion a de facto situation, which would be the ECSC, or to choose another basis. According to the French delegation, the most important point would be to establish proper regulations for the personnel of the new Communities, permitting at the same time a narrow, confined contact between the national administrations and the Community administrations. This would be a situation where a current and permanent exchange between them of people and ideas would, not only be possible, but would be the basis of their

⁴⁸² Conférence Intergouvernementale pour le Marché Commun et l'Euratom, Secrétariat. Bruxelles, le 2 mars 1957. Ch. Del. 412. Comité des Chefs de Délégation Statut des Fonctionnaires. CEAB 1/1328.

⁴⁸³ The Staff Regulations of the EEC did not come into force until 1 January 1962, after having been signed on 18 December 1961. It got the name of "Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community".

relationship. To the French delegation it was not seen as a necessity that the Regulations of the two Communities should be identical.⁴⁸⁴

The Dutch delegation pointed out their favour in the use of the Staff Regulations of the ECSC as the basis for the EEC and Euratom. They would also prefer the study of the problems the European officials had in other organisations such as the Council of Europe. During negotiations with the United Kingdom and the other members of the OEEC, the Dutch Government wanted very much to keep the connections and not make the Community too "closed". Although firm believers in European integration, they were usually more on the side of the intergovernmentalists and the supporters of a free-trade area. The Dutch delegation was also, in this connection, interested in making the French delegation produce a document with its opinion on the relations between the national administrations and the Community administrations.⁴⁸⁵

Already before the Staff Regulations came into force, the French Government had a system whereby officials served in the Commission on secondment from their national administration. It was thought that this would do more to "Europeanize" the officials than the creation of a career system separate for the Commission, by giving a greater number of officials the experience of service in Brussels. Others were of the opinion that the loyalties of the officials would remain with the national administrations, rather than being transferred to the Brussels Commission. The French continued its system of secondment of some officials after the Regulations came into force, which also had regulations concerning these officials. Section 2, Chapter 2 of the Staff Regulations deals with secondment, but only, however, of officials from, or within the three European Communities. According to the Staff Regulations, an official on secondment means an official who serves on a temporary basis "in a post outside that institution or at his own request who has been placed at

⁴⁸⁴ Bruxelles, le 24 novembre 1958, 1233/58 (Extr.) 5. Echanges de vues au sujet du Statut du Personnel des Communautés. CEAB 1/1328.

⁴⁸⁵ Bruxelles, le 24 novembre 1958, 1233/58 (Extr.) 5. Echanges de vues au sujet du Statut du Personnel des Communautés. CEAB 1/1328.

the disposal of another of the institutions of the three European Communities."⁴⁸⁶ The representatives of the Commission of the EEC were in favour of an inter-Community cooperation in this field and were of the opinion that the Staff Regulations of the ECSC ought to be used as a basis for the two new Communities.⁴⁸⁷

COREPER agreed to set up a working group for the study of the Staff Regulations. The group would be composed of three members from each delegation, one would be the over-all expert, one the financial expert, and the third would be a representative from COREPER. In addition, there would be representatives from the two Commissions, the European Parliamentary Assembly, the European Court of Justice, and one representative from the Committee of Presidents of the ECSC. The Group was to use as the basis for its work the various documents issued to the delegations by the Secretariat, and notably the report elaborated by the Interim Committee for the EEC and Euratom. The first meeting of this Group of inter-Community and inter-disciplinary cooperation took place on 28 November 1958.⁴⁸⁸

As the Staff Regulations had no firm basis of legal precedent on how to interpret their provisions, they had to be seen in many respects "as a manifesto rather than a legal ordinance". All they had to rely on were some cases in the Court of Justice arising from the Regulations of the ECSC. As their implementation "depended largely on the extent to which those who applied it shared the assumptions

⁴⁸⁶ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, Article 37. Official Journal of the European Communities, 14.6.62, 1385/62.

⁴⁸⁷ The discussions on staff rule and regulations in the High Authority lasted until 1955. Jean Monnet had won support for his idea of fixed-term contracts which would make it easier to choose the best, and most qualified officials. In early days there existed a need for a hard-core of administrators who already knew the objectives of the Community.

⁴⁸⁸ Communauté Economique Européenne, Le Conseil; Communauté Européenne de l'Energie Atomique, Le Conseil, Bruxelles, le 24 novembre 1958 1233/58 (Extr.). CEAB 2/1859.

and aims of those who conceived it",⁴⁸⁹ its provisions were not always reliable guides as to what was done in practice. A further difficulty was that, in its role as a manifesto, it was more like a manifesto of a coalition of interests and opinions and would therefore bear different interpretations and suit different aims. Even if the Staff Regulations were to be considered as Community law, the members of the Legal Service were guided in their interpretation mainly by the aims and intentions of those who drafted them. Accounts were, however, also taken of law and practice in the various member States, and attempts were made to merge this into a set of "international laws" regarding administration of personnel.

On 28 January 1959 there came a question from Mr. A. Bertrand, a member of the European Parliamentary Assembly, to the Council and the Commissions of the two Communities on the issue of the Regulations of Officials of the Institutions of the European Communities.⁴⁹⁰ The EEC Commission handed over to the Secretary of the Councils of Ministers and the Euratom Commission a draft answer worked out by President Hallstein. Other members of the same Commission were also invited to present their observations on the matter by 3 February 1959.

While referring in his question to Article 212 of the EEC Treaty and Article 186 of the Euratom Treaty, Mr. Bertrand wished to know what stage the drafting of the Staff Regulations had reached and if they would enter into force on a foreseeable date.⁴⁹¹ Mr. Bertrand pointed out that it would be of great advantage to those officials who were only being made available by their national administrations for a limited period of time. This group of officials had so far only rights and obligations given by their national administrations. In the early period this often

⁴⁸⁹ Coombes (1970) pp. 135-136.

⁴⁹⁰ Communauté Economique Européenne, Le Conseil. Communauté Européenne de l'Energie Atomique, Le Conseil. Bruxelles, le 28 janvier 1959. R/28/59. Note Introductive. CEAB 2/456.

⁴⁹¹ Communauté Economique Européenne, Le Conseil. Communauté Européenne de l'Energie Atomique, Le Conseil. Bruxelles, le 10 janvier 1959. R/25/59. Annexe I au doc. R/82/59. Question Ecrite No. 29 du 29 décembre 1958. De M. Bertrand. CEAB 2/456.

meant as well that, while serving the Commission in Brussels, they would lose out on important matters like pension rights in their home countries. Under the Staff Regulations for the Communities they would get the equivalent rights and obligations during their service for the European Communities.

In his draft answer to Mr. Bertrand, President Hallstein pointed out that the *Direction du Personnel - Division Statut* were at that time about to work out a pilot study of the Staff Regulations. They were expected to be able to hand over to the Commission a first draft accompanied by a statement of grounds to obtain its approval on the principle, and provoke a discussion consisting of the directives for the pursuing of the continuing work. At that time, no one was involved in the preparation of the Staff Regulations outside the Commission. The Working Group "*Statut*", set up by COREPER, was only examining, in the first place, problems related to payment. President Hallstein further stated that the Councils of Ministers of the EEC and Euratom, in accordance with Article 212 of the Treaty, had foreseen the date of 15 March 1959 to present the Staff Regulations and rules concerning conditions of work of other agents of the Communities. The Councils of Ministers also anticipated that COREPER ought to submit its proposal by that date.⁴⁹²

The way this matter was dealt with shows how the Treaty of Rome was different from the Treaty of Paris in the sense that the national governments, represented in the Council of Ministers, were given great powers in matters of "vital interest". In the early period it was important for the member States to get as much influence as possible in the organising of administrative structures. The Council also relied on assistance from COREPER being national representatives, appointed by the national governments, but which also, on the other hand, cooperated with the two Commissions. COREPER derived no authority from the Treaty of Rome,⁴⁹³ apart

⁴⁹² Annexe II au doc. R/82/59. CEAB 2/456.

⁴⁹³ COREPER was institutionalised through the Merger Treaty signed on 8 April 1965, coming into force on 1 July 1967. Article 4 states: "A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council."

from as a possibility mentioned above in Article 151. COREPER was therefore not to be considered as a Community institution, but was set up by the member States as a means of influencing in the Community decision making process. However, it also came to serve the purpose of informing and influencing both ways.

The elaboration of the proposals was worked out in November 1958 through a cooperation of the Six, together with representatives of the two Communities and observers from the ECSC. Apart from what concerns payment, however, it seemed unlikely that a common proposal could be ready by the already fixed date of 15 March 1959. At that stage it was impossible to see when the Staff Regulations as a whole could come into force. Nevertheless, what was seen as essential was to try to obtain Staff Regulations that would be as uniform as possible for the whole of the Communities of the Six.

In an answer from the EEC Commission of 5 February 1959, it was pointed out the importance, in the end, of getting identical rules for recruitment and classification of payment for all the civil servants of all the institutions of the European Communities. The same point was also stressed by the Euratom Commission in its answer of the same day.⁴⁹⁴

The Belgian delegation thought it appropriate that COREPER should be assisted by an expert prior to the meeting of the working group proposed by the French delegation. It wanted first of all a meeting set up, limited to representatives of the two Commissions, to fix a common timetable. The Italian delegation, on the other hand, underlined the urgency to define the general principles of the European public function. COREPER thought, in line with the French delegation, that a working group should be set up for the study of the Staff Regulations, composed of three members from each delegation, as well as representatives from the two Commissions. This working group would, taking into account the Staff Regulations

⁴⁹⁴ Extrait du Journal Officiel des Communautés Européennes No 13 du 26 février 1959. Réponse de la Commission de la Communauté Economique Européenne (5 février 1959). CEAB 2/456.

the ECSC, use as a basis for its work various documents passed on to the delegations by the Secretariat, and notably the report worked out by the interim Committee for the EEC and Euratom.⁴⁹⁵

The European Parliamentary Assembly (EPA) also gave its opinions on the matter of the establishment of Staff Regulations for the EEC and Euratom. Within the EPA there were experts opposing a scheme based upon a career system, meaning the possibility to get promoted without changing the job, which was the same system applied within the ECSC. These experts would prefer the adoption of the American system where each job corresponded to one single rank. The Vice-President of the EPA, Mr. Battaglia, expressed, in the Budgetary Session in April 1959, wishes for the European institutions not to install this system. Not only, did he say, was this out of moral political principles, but also to avoid arriving into difficulties as the disruption of the political system could place the Six in a situation of too much fluctuation.⁴⁹⁶

The President of the Committee on Administration and Budget, Mr. Francis Vals,⁴⁹⁷ on the other hand, asked whether the concern, often expressed by governmental experts, of establishing a system of payment similar to the ones in use in the Community of Fifteen⁴⁹⁸ ought to be taken into consideration. He was of the opinion that the success of the payment system in NATO and OEEC would not necessarily correspond to the composition and necessities of the institutions of the European Communities. He further found it necessary for the administrative

⁴⁹⁵ Communauté Economique Européenne, Le Conseil; Communauté Européenne de l'Energie Atomique, Le Conseil, Bruxelles, le 24 novembre 1958, 1233/58 (Extr.). CEAB 2/1859.

⁴⁹⁶ Assemblée Parlementaire Européenne, Session Budgetaire d'avril 1959. APE. 1787. Extrait de l'Intervention de M. Battaglia, Vice-President de l'Assemblée Parlementaire Européenne, 10 avril 1959. CEAB 2/1859.

⁴⁹⁷ Assemblée Parlementaire Européenne, Session Budgetaire d'avril 1959. Extrait de l'Intervention de M. Vals, Président de la Commission de l'Administration et du Budget APE 1787. CEAB 2/1859.

⁴⁹⁸ OEEC and the Council of Europe.

committee to be unanimous on the subject, and that the working group for setting-up the Staff Regulations had to take into account the only European Statute known, which was that of the ECSC.

In a Resolution on the Staff Regulations, the EPA underlined the necessity to elaborate and put into work the Staff Regulations foreseen by the Treaty of Rome as early as possible, after having consulted the representatives of the personnel. The matter was at the time being studied by the working group instituted by the Commission. The EPA estimated that, given the similarities of the tasks of the personnel of the three Communities, and in particular the payment system, the new Staff Regulations ought to be similar along the general lines to the Regulations applied in the ECSC.

After having the report made by the working group on the Staff Regulations, COREPER found it necessary to set up a list of questions, issued on 17 July 1959.⁴⁹⁹ These were questions which to COREPER seemed to be of priority to a decision by the Councils of Ministers for the following up of the work in establishing a payment system for the personnel of the Communities. The main questions concerned the choice of payment system. According to COREPER there were two alternatives. The first alternative was the one in use in the European intergovernmental institutions such as the Council of Europe, OEEC and WEU which was set up by the "Serres" Report.⁵⁰⁰ On the other hand, there was the system in use in the ECSC. The main difference between the two systems was the

⁴⁹⁹ Communauté Economique Européenne, Le Conseil; Communauté Européenne de l'Energie Atomique, Le Conseil, Bruxelles, le 17 juillet 1959, R/514/1/59. Annexe I au doc. R/521/59. Statut du Personnel des Communautés, Régime de Rémunération. CEAB 2/1859.

⁵⁰⁰ It has not been possible to trace the origin of the "Serres" Report, who wrote it and when. It seems likely, however, that the name could come from the French diplomat Jean Serres who worked for the United Nations, mainly on intergovernmental issues. Mentioned in: Communauté Economique Européenne, Le Conseil. Communauté Européenne de l'Energie Atomique, Le Conseil. Bruxelles, le 17 juillet 1959. R/514/1/59 Annexe I au doc. R/521/59. Statut du Personnel des Communautés, Régime de Remuneration. CEAB 2/1859.

geographical representation on the level of treatment. The national experts were on this matter of the opinion that it would be desirable to treat the salaries of the Community staff on a much broader scale than what was the practice of the ECSC. The big question seemed to be whether to adopt the system of the ECSC or that of the "Serres" Report.

6.2 Passes and Identity Cards

On 20 October 1958 a note was issued by the Secretariat of the Councils of Ministers of the EEC and Euratom on passes and identity cards to be given to the members and officials of the institutions of the European Communities.⁵⁰¹ According to the President of the EEC Commission, Walter Hallstein, it had seemed appropriate that the members and officials of the Commission in question should be given passes and identity cards. The instituting of passes and identity cards would be in accordance with Article 6 of the Protocol on the Privileges and Immunities of the European Economic Community which states:

"Passes in a form to be laid down by the Council and which shall be recognised as valid for travel purposes by the authorities of the Member States **may** be issued to members and servants of the institutions of the Community by the presidents of these institutions. Such passes shall be issued to officials and servants under conditions laid down by the terms of service provided for in **Article 212 of this Treaty**. The Commission may conclude agreements for these passes to be recognised in the territory of third countries as valid travel documents."⁵⁰²

COREPER was inclined to choose the form adopted for the passes of the members of the European Parliamentary Assembly, a matter which had been settled by the Councils of the two Communities on 1 July 1958. This settlement was, however, very different from the practice of the ECSC. Article 6 of the Protocol on the Privileges and Immunities of the Treaty of Paris stated that "[T]he President of

⁵⁰¹ Communauté Economique Européenne, Le Conseil. Communauté Européenne de l'Energie Atomique, le Conseil. Bruxelles, le 20 octobre 1958. 1147 f/58. Note du Secrétariat. CEAB 2/125.

⁵⁰² Own emphases.

the High Authority issues the passes to members of the High Authority and to higher civil servants of the Institutions of the Community." In that case it was the President of the High Authority who would issue the passes. In the case of the two new European Communities, on the other hand, passes were to be issued by the presidents of the various institutions after a decision by the Councils of Ministers. Furthermore, "Agreement concerning passes" of 18 August 1953, between the member States and the ECSC, excluded enforcement on members of the European Parliamentary Assembly.

There was also discussions about whether members of the Economic and Social Committee (ESC) were entitled to passes or not, as it was not mentioned in Article 4 of the Treaty of Rome as being among the Community institutions. On the other hand, in Article 10, paragraph 2 of the Protocol on Privileges and Immunities of the European Economic Community, it was stated that "[T]his Article shall also apply to members of the consultative organs of the Community", of which the ESC is one. The Council of Ministers settled the form of the passes on 1 July 1958. The document had to be issued in the name of the President of the Institution or the institutions concerned and of the President of the High Authority.⁵⁰³ In the same note from the Secretariat of the Councils of the two Communities, there was included a proposal from COREPER on the issue of passes and identity cards. The Committee wished to propose to the Councils of the EEC and Euratom the adoption of passes which would be given to members and civil servants of the two Commissions. Secondly, they would propose to the member States of the ECSC and to the High Authority to abandon the application of the "Agreement concerning passes". If not in total, then at least what concerned the members of the European Court of Justice and civil servants of the common institutions. In this proposal lay the assumption that all the institutions of the Communities would adopt the same type of passes and identity cards in a uniformed system.

⁵⁰³ Communauté Economique Européenne, Le Conseil; Communauté Européenne de l'Energie Atomique, Le Conseil, Bruxelles, le 20 octobre 1958, 1147 f/58. Note du Secrétariat. CEAB 2/125.

Already from the very early days of the EEC and Euratom, there were wishes for, and attempts made, for the three European Communities to have as many similar features as possible. The national representatives in COREPER in particular pushed hard for such a development.

6.3. The draft "*Statut de Service*" and the Regulations of 1962 compared with the Regulations of the ECSC⁵⁰⁴

The Staff Regulations which were eventually adopted on 1 January 1962 by the EEC and Euratom were divided into all together nine Titles and nine Annexes.⁵⁰⁵ The Titles dealt with the rights and obligations of the officials, their careers and working conditions as well as emoluments, social security and benefits. In the Annexes one would find regulations concerning leave from a position, remuneration and reimbursement of expenses, as well as a pension scheme. The fact that these Staff Regulations were adopted gave the officials of the two new European Communities much more security as well as career prospects than what had been the case before, in particular in areas like pensions and social security.

In Article 1, one of the big differences between these two Communities and that of the ECSC was already spelled out. This was the use of the word "supranational" in the way of describing the Community. As it had been used already in the Treaty of the ECSC, it should come as no surprise to see this word used also in its Staff Regulations. By the time of the setting-up of the EEC and its Staff Regulations, the member States were not very keen on the creation of another supranational institution. Further, in Article 1 it was explained the criteria for being classified as a Community civil servant, and the fact that the staff of the Economic and Social Committee in this case were included. This Committee had not been mentioned in the equivalent Article 1 of the ECSC Regulations. Further in the Staff

⁵⁰⁴ *Projet de Statut de Bruxelles*. CEAB 12/799.

⁵⁰⁵ The *Statut de Service* was given the name "Staff regulations of officials of the European Economic Community and the European Atomic Energy Community".

Regulations of the ECSC, Article 24 classified the officials into 13 ranks, which again were grouped into categories corresponding to the similarities of the jobs. The first category covers the ranks from 1 to 8, the second ranks 6 to 10, and the third ranks 9 to 13. Within the first 4 ranks there were 5 levels at the maximum, whereas the other ranks had all 6 levels. In Article 5 of the draft Regulations, the so-called *Projet de Statut de Bruxelles*, the Commission would consist of 4 categories; A, B, C, D. Category A would consist of 8 ranks, categories B and C of 5 each and D of 4 ranks.

The EEC Commission presented its proposal, in the *Projet de Statut de Bruxelles*, where jobs which could be affected by civil servants relevant to the present Regulations would be classified, following the nature of the functions to which they correspond, into three different frames. There would be a general frame which would cover the categories A, B and C. Then, both the linguistics frame as well as the technical one would be divided into 8 ranks each.

A Staff Committee was proposed set up in the *Projet de Statut de Bruxelles* for each of the institutions of the EEC, a decision which was to be found in Article 9 of the final version of the EEC Staff Regulations. These would be sub-divided into sectors corresponding to each affected place. The Committees should represent the interests of the staff to the institutions and assure a permanent contact between them. An equivalent Committee had already been set up for the ECSC. Article 19 of the Regulations of the ECSC stated that "[L]es intérêts du personnel sont représentés auprès de l'Institution par un Comité du Personnel."⁵⁰⁶ To assure a uniform application of the arrangements of the Regulations and the study of all the suggestions of revising them, the Commission considered that the Staff Regulations Committee ought to be competent for all the Communities consisting of representatives from each institution and their personnel.

Despite the above mentioned differences mentioned in the Articles 1, the

⁵⁰⁶ "The interests of the staff are represented to the institution by a Staff Committee." Own translation.

initial proposal from the European Commission over Article 10 stated that: "The civil servants of the Community should under all circumstances model its conduct on its Statute of supranational civil servants."⁵⁰⁷ As has been mentioned earlier, certain forces within the Commission strongly wished to refer to the supranational character of its civil servants, wanting this to be more in line with the High Authority, and what it had been set out to be. Another theory might be that the Commission felt the need to use the word supranational in order to try to create a supranational institution, as the word had not been used in the Treaty. However, the word was not, in the end, to be used in the final version of the Staff Regulations of the EEC.

Both the Staff Regulations of the ECSC as well as the Staff Regulations of the EEC made rules concerning who were qualified to become a civil servant of the respective Communities. According to both Regulations a civil servant would have to be a national of one of the member States, although with a few exceptions. Both had reference to military service, character references, the passing of a competition, and the "thorough knowledge of one of the languages of the Community and of a satisfactory knowledge of another language of the Communities to the extent necessary for the performance of his duties."⁵⁰⁸

7. CONCLUSION

With the setting-up of the European Commission in 1958, President Hallstein had wanted to create what he often referred to as "a great administration". By that he meant an administration whose expertise would be equal, if not superior, to that

⁵⁰⁷ Own translation and emphasis. *"Le fonctionnaire de la Communauté doit en toutes circonstances conformer sa conduite à son statut de fonctionnaire supranational."*

⁵⁰⁸ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (Statute of Service), of 18 December 1961.

of national civil services. The administration would be an independent administration answerable to the institution alone.⁵⁰⁹ One should further bear in mind the fact that the European Commission was a completely new kind of organisation when it was set up, and that the people present were involved in building this new type of administration, not knowing exactly what it would lead to. A great deal of idealism existed among these people who came together from six different countries to build a common future. In the beginning it operated very much as a political body. Administrative structures were important but came nevertheless in second row after the setting-up of the Common Market and the implementation of common policies. A strong leadership was therefore essential, something which was provided by President Walter Hallstein. The way he handled his team of eight other strong personalities from six different countries made the European Commission of this period into something unique in European administrative history.

It would seem careless to forget that the EEC had associated great countries who had only a short time before been enemies, but who were conducted towards a European Union for a price formerly paid by the defence of their prestige, and of less powerful nations profoundly attached to their independence and their neutrality. As said once by a Dutch Secretary of State to the Commissioner Robert Lemaigen:

*"Quand vous, Français, vous vous jetez la vaisselle à la tête avec les Allemands, nous en sommes désolés car nous savons bien que dans tous les cas nous souffrirons des éclaboussures. Mais quand vous vous entendez avec eux, nous nous demandons pour combien nous pouvons espérer compter dans la politique européenne."*⁵¹⁰

In his speech to the European Parliamentary Assembly in March 1958, President Hallstein was in a rather optimistic spirit about both the present situation

⁵⁰⁹ Emile Noël, *Crisis and Progress: The Bricks and Mortar of Europe*, p. 56. Emile Noël (1987) *Crisis and Progress, driving forces for European construction* (Brussels: European Community Commission).

⁵¹⁰ Lemaigen (1964) p. 93. Own translation. "When you, the French, throw crockery at the Germans, we get upset because we know all too well that every time we will be hit by the pieces. But when you agree with them we wonder for how long we can hope to exert any influence on European policies."

and about the future. Many plans were made about how the Community should and would look like in the years to come. He wanted to express to the external world a philosophy of freedom, of peaceful co-operation, of openmindedness and of progress. He was also optimistic about the establishment in the near future of the Social Fund and of a Common Agricultural Policy, which meant filling out the prerogatives of the Treaty of Rome and creating common policies.

CHAPTER V

THE EUROPEAN FREE TRADE NEGOTIATIONS AND THE ROLE OF THE EUROPEAN COMMISSION

*"Great Britain has lost an empire and has not yet found a role. The attempt to play a separate power role - that is, a role apart from Europe, a role based on a "special relationship" with the United States, a role based on being the head of a "commonwealth" which has no political structure, or unity, or strength and enjoys a fragile and precarious economic relationship by means of the Sterling area and preferences in the British market - this role is about played out."*⁵¹¹

1. INTRODUCTION

These are the words of the former American Secretary of State, Dean Acheson, speaking at a student conference in New York in 1963. The quote can be seen as more or less typical for the United Kingdom of the post-war period. She had not been hurt in the same way as the European countries on the continent had, and was hence clinging on to a situation of Europe before the Second World War. Something which was going to mark her behaviour in the Free Trade Area negotiations of the mid- to late-1950s.

Since the very first steps of uniting Europe, the continental European States have always made serious attempts to incorporate the United Kingdom. And even if she has not always joined from the beginning, she was always thought to join "once she knows that it works". However, the opposition has been very strong in this country of old democratic traditions to surrender any part of her sovereignty to any European supranational organisation. On the other hand, the United Kingdom was not seen by most commentators as deliberately trying to damage or undermine the integration process during this period. In the writings of Miriam Camps and in the

⁵¹¹ Ball (1968) *The Discipline of Power*, p. 69.

book by Dirk Spierenburg and Raymond Poidevin it appears that the Association Agreement between the United Kingdom and the High Authority, which was signed only a few months after the collapse of the EDC, came about eventually because the United Kingdom did not want to make any hindrances for a further European integration.⁵¹²

The United Kingdom was invited already in May 1950 to join the Schuman Plan for a common market of coal and steel. However, as Prime Minister Clement Attlee told the House of Commons: "We on this side are not prepared to accept the principle that the most vital economic forces of this country should be handed over to an authority that is utterly undemocratic and is responsible to nobody."⁵¹³ The British refusal to enter the negotiations with the Six over the setting-up of the ECSC came on the grounds that the precondition for entering meant an acceptance of a supranational authority, a presupposition later set by the Six in Messina in June 1955.

According to the so-called "Good Europeans", like Jean Monnet and Robert Schuman, it was clear that substantial progress was unlikely to be made merely by formal arrangements for consultation among governments. This was the solution the British had insisted upon in drafting the final acts of the OEEC. Among the Six, however, there was a common opinion that "[I]ntergovernmental debating societies are simply not good enough".⁵¹⁴

Throughout the 1950s Germany's economy grew three times faster than that of the United Kingdom, Italy's more than two times faster, and France's one and one-half times more quickly than the British economy. Germany, France and Italy

⁵¹² Mr. Duncan Sandys to the House of Commons, 21 February 1955. In: Camps (1964) p. 46. Also "London felt it should give the right signals when the failure of the EDC threatened European integration" In: Spierenburg and Poidevin (1994) p. 218.

⁵¹³ Dennis Swann (1992) *The Economics of the Common Market* (Harmondsworth: Penguin) p. 7. See also Palmer et al. (1968) p. 258.

⁵¹⁴ Ball (1968) p. 58.

were all more or less destroyed after the war and needed a complete rebuilding of their industries. United Kingdom, on the other hand, had in comparison suffered only mild damage from the war, and did not to the same extent realize the need for change. Other reasons for not wanting to commit herself too strongly to Europe were the special relationship with the US as well as commitments to the Commonwealth countries. European integration has always been seen as unfavourable to the main lines of the United Kingdom's foreign and defence policy, mainly due to her many other obligations in the world. As George Ball put it: "British policy rests on three equally important and complementary 'legs'"; what Anthony Eden called the "three-legged stool": the Commonwealth, Europe and America.⁵¹⁵

During his period in opposition from 1945 to 1951, Winston Churchill argued most favourably for European unification. In a speech at the University of Zurich in September 1946 he argued for a Franco-German reconciliation as the first step towards "a kind of United States of Europe".⁵¹⁶ In 1950 he proposed the "immediate creation of a European Army under a unified command in which we should all bear a working and honorable part". In the House of Commons he pleaded for building a united Europe on the three pillars of the United Kingdom, France and Germany, saying it was time to forget about "ancient feuds and the horrible deeds and tragedies of the past".⁵¹⁷ Despite all grand words, however, the United Kingdom of the 1950s was trying to "keep all the options open" while seeking to pursue a wide variety and complexity of foreign roles. When asked to join the ECSC in 1950 the answer was a straight "no", with one reason being that it was restricted to Western Europe. Another reason was that the United Kingdom did not want to commit herself to something that was still a mere idea which no one knew how would turn out. Foreign Secretary Anthony Eden said in a speech at Columbia University on 11 January 1952 how it was frequently suggested "that the United

⁵¹⁵ Ball (1968) p. 73.

⁵¹⁶ By this statement, though, he must have meant a looser construction than what was argued for among the federalists on the continent, something more like a confederation.

⁵¹⁷ Ball (1968) p. 74.

Kingdom should join a federation of the continent of Europe" while, he continued, "[T]his is something which we know, in our bones, we cannot do."⁵¹⁸

The Free Trade Area Negotiations between the Six and the other members of the OEEC started with the establishment of an OEEC special working party in July 1956, until what we have chosen to call the first phase of the negotiations collapsed two years later, in November 1958. One question that arises in this connection is who were the negotiators. We know that the British were involved and we know that the OEEC Council was involved. However, shortly before and just after the establishment of the EEC and the European Commission it becomes less clear which bodies were involved, and what role they might have played. One question that one must try to answer is whether the national Governments and the European Commission negotiated at the same time in the same negotiations during 1958. In the case of the European Commission it is also important to study what kind of role it played, whether big or small. Further, if one finds out that the Commission did play a part in the Free Trade Area negotiations one has to discuss whether this was an active, political role, or merely a secondary administrative role, carrying out instructions from the member States' Governments. During the negotiations between the United Kingdom and the High Authority, the latter came to play a role which looked very much like that of a sovereign State when the Association Agreement was formed between the two parties. Later on, when the Common Market became involved, the situation seemed more complicated as to who were the negotiating parties. This was in particular so as the European Commission of the EEC had not yet been set up when the Free Trade Area Negotiations were initiated in 1956.

Although the Free Trade Area negotiations generated considerable ill will and acrimony and ended as well in failure, it made an important contribution to both of these developments: the forming of the European Community and the evolution of a new British policy towards Europe. The Free Trade Area negotiations did see a

⁵¹⁸ Ball (1968) p. 76.

shift in the British Government's attitude towards Europe as well as a beginning of a questioning of the priorities that had hitherto conditioned all official, and most unofficial, thinking about the United Kingdom's external relations. Furthermore, the two years of negotiations had created a much clearer commitment among the Six to the goal of economic union.

The European Commission only played a role during the last part of these negotiations, from around March 1958 until the collapse in November the same year. We have seen from earlier chapters above that the main body of the Commission administration was set up during March 1958. As it was not established at the start it had not been designated a role and its position remained rather unclear, both from a legal point of view as well as politically. In this chapter we will try to find out when the European Commission joined the Free Trade Area negotiations, as well as what role it then played. It will be particularly interesting to discover whether it proved to be an independent, political body during these negotiations so soon after it was set up. What is true is that it does seem to have made a considerable contribution towards the end.⁵¹⁹

There were many actors involved in the Free Trade Area negotiations during the years they lasted. These were States as much as multilateral organisations. All of these actors cannot be discussed in detail but one which will be dealt with more than the others will be France. France was the country which changed its position most during the negotiations. It was the country that held the key to the result, and

⁵¹⁹ From the Free Trade Area negotiations of 1956-59 there can be drawn certain analogies to the Schengen Agreement of the 1980s and 1990s. In both examples the negotiations started out on an intergovernmental basis, only involving representatives from the member States' governments. In the Free Trade Area negotiations this was because the EEC and the Commission had not been set up at its start. Once established, the Commission entered the negotiations together with the national representatives. In the case of the Schengen Agreement the member States did not wish to involve the Commission at the negotiating stage, and the Treaty was negotiated among the national governments. The Schengen Agreement partly started operating in March 1995, and more countries of the European Union are interested in joining. It is therefore speculated that the whole operation will be handed over to the European Commission sooner or later.

the country which finally broke them off. This resulted in a determination to see a successful setting-up of the Common Market and its institutions. The question remains, however, whether the Free Trade Area could have been successfully established too, had the Six of the Common Market managed to adopt a common position.

2. THE UNITED KINGDOM VS THE HIGH AUTHORITY: THE AGREEMENT OF ASSOCIATION

*"We British will certainly be prepared to accept the merger of sovereignty in practice if not in principle."*⁵²⁰

The relationship between the United Kingdom and the rest of Europe - in particular that of the European Communities - has always been a difficult and strenuous one. Due to her obligations and relations elsewhere, the United Kingdom has never had more than one foot in Europe. Nevertheless, it is a fact that Europe and the United Kingdom depend on each other, there are only differences as to how this dependency has been viewed by the two parties.

Already from the launching of the Schuman Plan and the negotiations for setting-up the European Coal and Steel Community (ECSC), the United Kingdom was invited to take part. However, the United Kingdom wanted a relationship with the ECSC with, ideally, as much influence as possible and no responsibility. The High Authority suggested to set up a formal association between the two parties already in the autumn of 1952, and by the end of December 1954 an agreement was reached. The way the British operated, and due to its role in Europe and the larger world, it was important to get the United Kingdom on the "team" in one way or the other. Nevertheless, it was generally assumed during the 1950s that she would not join the Community as a full member.

⁵²⁰ Quote by Harold Macmillan on the issue of European unity. In: Ball (1968) p. 57. This quote shows the British attitude of the time towards new things and concepts. They would want to see it in operation and working before committing themselves.

2.1 United Kingdom: "in" but not "taking part"

In August 1952, as the High Authority started its work in Luxembourg, it was decided to set up a United Kingdom permanent delegation to the High Authority. According to Spierenburg and Poidevin "the British Government signalled its intention to co-operate"⁵²¹ as soon as the High Authority took up office. Its President, Jean Monnet, made a trip to London on 21-23 August 1952 where it was agreed to set up this British Permanent Delegation to the ECSC. Sir Cecil Weir was chosen as its Head, or Permanent Representative. This delegation had instructions to "pave the way for a close and lasting association between the Community and the United Kingdom and to deal with the day-to-day matters of common interest".⁵²² The Secretary of State for Foreign Affairs, Anthony Eden, was of the opinion that this would in no way diminish the importance of the so-called Eden Plan, a plan which suggested institutional links between the Council of Europe and the two European Communities, ECSC and EDC. The Eden Plan was presented in Strasbourg on 2 September 1952, and it was understood by members of the Community as a proof of the British wish to be "in" but not "part of" the parliamentary assemblies.⁵²³

One problem that arose was the United Kingdom's wish to have a say in the High Authority decision-making process, without joining as a member. As an attempt to solve the problematic situation Monnet proposed the setting-up of a "Joint Committee" to work out a way of associating the United Kingdom with the High Authority. This Committee first met on 17 November 1952. The reason for such an association between the ECSC and the UK was, as Paul Reuter put it, the wish for *"une action en commun, des responsabilités, des droits et des obligations partagés"*

⁵²¹ Spierenburg and Poidevin (1994) p. 202.

⁵²² Spierenburg and Poidevin (1994) p. 202.

⁵²³ Haas (1958) p. 440.

sur un pied d'égalité".⁵²⁴ From February 1953 onwards there were secret talks between Monnet, Spierenburg and Etzel from the High Authority, and Sir Cecil Weir and Marjoribanks representing the United Kingdom, on a possible association. A conclusion was reached in July 1953 where "an association would be possible by means of an agreement setting-up a single market for steel together with a limited association for coal".⁵²⁵ To Monnet the two most important aspects of European integration were to keep Germany within the Communities, and to maintain peace. In order to fulfill these goals he considered it of great importance to have the United Kingdom in, taking into account its role in the development of Europe.

On 23 December 1953 the High Authority approved a draft letter inviting the British Government to open negotiations with the aim of achieving an association. It proposed the creation of a Council of Association with six members in total, three from the High Authority and three appointed by the British Government. A few months later a joint meeting was held between government representatives of the Six and the High Authority.⁵²⁶ This meeting clarified the positions of all parties concerned, and laid down conditions for negotiations. The French wanted to know if the High Authority acted within its powers in trying to open negotiations with the United Kingdom. In the view of Maurice Schumann, the French Secretary of State for Foreign Affairs, the High Authority would have needed a special mandate from the Six. From a French point of view there existed a great fear of losing out in competition with the British. A later meeting of the Council of Ministers on 9-10 April 1954 allowed the High Authority to continue the negotiations, although it was decided that the governments had the right to be informed and to be involved. Article 14 of the ECSC Treaty, Part II, further established what one might interpret as strict instructions for entering into negotiations with the United Kingdom:

⁵²⁴ "A common action with legal responsibilities and obligations shared on an equal footing." Own translation. Paul Reuter (1953) *La Communauté européenne du charbon et de l'acier* (Paris: Librairie generale de droit et de jurisprudence) pp. 129-130.

⁵²⁵ Spierenburg and Poidevin (1994) p. 204-205.

⁵²⁶ Spierenburg and Poidevin (1994) pp. 206-208.

"Once the High Authority has taken office, Member States **shall** open negotiations with the Governments of third countries, and in particular with the British Government, on the whole range of economic and commercial relations concerning coal and steel between the Community and these countries. In these negotiations the High Authority shall act, upon instructions unanimously agreed by the Council, for the Member States jointly. Representatives of Member States may be present at the negotiations."⁵²⁷

After the failure of the EDC the High Authority was more interested in an association than ever before. To the High Authority it was important that the integration process did not come to a halt. This was a feeling which was, to a certain degree, shared by the United Kingdom in hoping for it to be a situation she could use to her advantage. As expressed by Spierenburg and Poidevin "it [...] was thought that fear of failure would make the ECSC negotiators more flexible in their discussions".⁵²⁸ As the negotiations proceeded the emphasis furthermore became more political.

Dirk Spierenburg, the Dutch member of the High Authority, was opposed to giving the United Kingdom the privilege of an equal footing with the Community. With the possible association between the ECSC and the United Kingdom came also the problem of representation. Was it going to be a one-to-one relationship where the United Kingdom counted for one half and the Community of Six for the other half? Or was the ECSC to count for six with the United Kingdom as the seventh member? Prime Minister Mendès-France in France suggested to let the United Kingdom have a seat in the High Authority as an observer, which would have given her one vote in seven instead of one in two. Spierenburg, however, objected, as such a situation would be in contradiction with the Treaty of Paris, which in the above mentioned Article 14 gives the High Authority the right, and also the duty, to negotiate with third countries on behalf of the member States. Germany also strongly opposed the idea of a transfer of power to the High Authority concerning the negotiations with

⁵²⁷ ECSC Treaty, Part II, Relations between the Community and Third Countries, Chapter I, Negotiations with Third Countries, Article 14. Own emphasis.

⁵²⁸ Spierenburg and Poidevin (1994) p. 211.

the United Kingdom. Germany, further, supported the French wish for close links between the British Government and the Council of Ministers, something which was again opposed by the Dutch. According to the High Authority there was no such thing as a Council of Ministers of seven, only joint meetings of three patterns: the Council of Ministers, the High Authority, and the British Government. The British Government was not interested in being one of seven, but in stead to deal with the ECSC as one unit.

When it came to determining the situation of the United Kingdom within its association with the ECSC, the French Government suggested to place the United Kingdom on the same foot as the other government's in the construction of Europe. Under such conditions it would mean that the United Kingdom would be associated in a project of agreement of setting-up a body consisting of the British Government on the one hand, and the High Authority, representing the Community, on the other. There would further be held mixed meetings between the High Authority and the Council of Ministers on the one hand, and the British Government on the other. As institutional arrangement, however, the French Government would only accept an enlargement of the Council of Ministers, with the British Government becoming the seventh member. An association with the United Kingdom would neither mean an enlargement, nor a diminishing, of the powers of the High Authority. Article 6 of the ECSC Treaty was rather ambiguous about the role of the High Authority. However, in the opinion of MM. Ophüls, De Rossi and Reuter, the High Authority could not make agreements directly with the UK Government of the type like the Association Agreement was foreseeing.⁵²⁹ With this is meant that the High Authority, in negotiating with third countries, was to "represent all the member states together", acting as a "joint representative of the member states".⁵³⁰ What Article 6 said, however, was that "[T]he Community shall be represented by its institutions, each within the limits of its powers".

⁵²⁹ ECSC, High Authority, 9 November 1954. Notes to the High Authority after the meeting between M. Uri and M. Ulver (French Minister of Industry and Commerce). CEAB 1/1537.

⁵³⁰ Spierenburg and Poidevin (1994) p. 186.

At noon on 23 September 1954 Sir Cecil Weir informed Jean Monnet by phone that the project which had been established between the United Kingdom and the High Authority had been approved in the United Kingdom. The following day Monnet announced to the Secretariat for negotiations between the United Kingdom and the ECSC that the "form and function of the institutions had not been finally agreed upon". Nevertheless, it was clear that the institutions were not to be supranational, and it was not a common market they had set up but an association.⁵³¹

Jean Monnet, Franz Etzel and Dirk Spierenburg were, in their positions as members of the High Authority, authorized on 18 December 1954 to sign the Agreement of Association with the United Kingdom. Another member of the High Authority, Albert Coppé, however, wanted at the same time to express his opposition to the delegation of full powers to different members of the High Authority which would enable them to negotiate with third countries.⁵³² Only days later, on 21 December, an Agreement of Association was signed by the British Government and the High Authority, setting-up a Council of Association between the two parties. This act thus placed the High Authority in an equal position with the British, as a sovereign state. The British, on the other hand, recognised the High Authority as an international organisation, and not as a state. In April 1955 an Interministerial Committee was set up in London to handle the British relations with the ECSC. The House of Commons ratified the Agreement of Association on 21 February 1955 and the whole ratification procedure had ended by June.⁵³³ The first meeting of the Council of Association which was held in Luxembourg was called "*le principal événement de l'année 1955*".⁵³⁴ In this meeting were four representatives from the

⁵³¹ 23 septembre 1954, 12 heures. CEAB 1/1537.

⁵³² Spierenburg and Poidevin (1994) p. 216.

⁵³³ The ratification of the "Agreement concerning the relations between the United Kingdom of Great Britain and Northern Ireland and the European Coal and Steel Community" was deposited by the United Kingdom on 17 June 1955. Cmnd. 9346 (1954-55) and Cmnd. 13 (1956-57).

⁵³⁴ "the principal event of the year 1955". *L'Année Politique* 1955, p. 559.

United Kingdom and four representatives from the High Authority.

During the negotiations leading up to this association, the High Authority had, in many ways, acted as a sovereign state entering into multilateral negotiations with another sovereign state; the United Kingdom. The latter would naturally not have seen it from that point of view but did, nevertheless, negotiate with the High Authority representing the member States of the ECSC. This was possible for two reasons in particular. Firstly, the setting-up of the High Authority and the ECSC was the primary reason for such negotiations to take part. Secondly, the High Authority had managed to present a common position of the Six from the start, much due to its President Jean Monnet who put great importance in an association with the United Kingdom, if he could not get them to join the ECSC as full members. Another point which should be mentioned, and which might most certainly have had an impact, was the generally favourable circumstances concerning supranationalism until the rejection of the draft EDC Treaty in August 1954. The Schuman Plan and the setting-up of the ECSC was still fresh in mind. This had shortly been followed by the signing of the Treaties of the EPC and EDC, which developed an even stronger optimism within "European" circles. A few years later, after the failure of the EDC in particular, it was to prove much more difficult for the European Commission to achieve anything similar.

3. THE EUROPEAN FREE TRADE AREA NEGOTIATIONS BEFORE THE SETTING-UP OF THE EUROPEAN COMMISSION

3.1 The British Free Trade Proposals

The Benelux Memorandum for the setting-up of a common market in 1955 proposed that the intergovernmental conference should include, apart from the six member countries of the ECSC, and its representatives, also "those countries that have signed a treaty of association with the ECSC", something only the United

Kingdom had done.⁵³⁵ During most of 1955 the "dominant impression in the United Kingdom was that European unity was developing fast enough and in a way in which the United Kingdom could comfortably assist".⁵³⁶ Nevertheless, she withdrew her negotiators from the Spaak Committee in November 1955.⁵³⁷

While the British governments turned down a series of invitations to join the Common Market, they contented themselves with several weak counter-proposals involving no derogation of national sovereignty. The United Kingdom used the OEEC as an attempt to save itself from suffering disadvantages as a result of the setting-up of the EEC and Euratom. However, it was doing so while seeking to avoid participation in common policies, financial arrangements, a common external tariff, and in the Community institutions. Instead, the United Kingdom proposed an industrial free trade zone comprising all the seventeen OEEC countries.⁵³⁸

If the British Government had been ready to negotiate in terms of the customs union at the time of the Spaak Committee negotiations, the chances are they would have obtained extensive exceptions for its Commonwealth trade and for the British agriculture. The British, on the other hand, were prepared to accept rules similar to those in the Treaty of Rome concerning subsidies and other government actions on discrimination and unfair competition. They were also prepared to consult the other countries on most problems and policies, and to take part in the complaints procedure. This meant that while the British were unwilling to accept arrangements or commitments parallel to those of the Treaty of Rome, they would be prepared to

⁵³⁵ Camps (1964) *Britain and the European Community 1955-1963*, p. 27.

⁵³⁶ Camps (1964) p. 46.

⁵³⁷ The Spaak Committee was set up in July 1955 as a consequence of the Messina Conference in June the same year. It had its first meeting on 9 July 1955 in Brussels. See above Chapter III.

⁵³⁸ Since the very start of the OEEC in 1948 it has promoted the idea of a free trade system, with strong support from the USA. However, differences in view about commitments from the various member States has existed all along, reflecting the divisions later established with the EEC. Britain, as an example, objected to the wish of most of the continental countries to set up a customs union.

recognize the right of a country to bring a complaint if the absence of such a provision should result in hardship or a demonstrably "unfair" situation.⁵³⁹

The British proposal came after several more or less successful efforts had been made by Jean Monnet, Maurice Faure and Robert Marjolin to get the United Kingdom to join the Six, at least in some form of association. As expressed by George W. Ball, it was the general opinion that the British wanted "to have its economic cake and eat it too".⁵⁴⁰ This seemed clear when, in June 1956, it appeared to the British "reasonably certain"⁵⁴¹ that the Treaty of Rome would be signed and ratified. The British, therefore, proposed that the European Economic Community should become part of a broader and looser Free Trade Area, including all the countries of Western Europe. This, however, would be a commercial trading bloc that would be discriminatory towards the United States and the rest of the world, while offering the West none of the political benefits of true European integration. After a year and a half of negotiations between the Six and the rest of the OEEC countries, the proposal failed, first of all due to opposition from France.⁵⁴² The result was that the United Kingdom put together a loose commercial arrangement of the so-called Outer Seven hoping to be able to merge the Six and the Seven in a loose, non-political trading bloc.⁵⁴³

3.2 Launch of the Negotiations

On 19 July 1956, a resolution was produced by the OEEC Council initiating the Free Trade Area negotiations. This resolution expressed a desire for an association between the Six of the ECSC and the rest of the OEEC countries to be as wide as possible, and a special working party was set up to produce a report on

⁵³⁹ Camps (1959) *The Free Trade Area Negotiations*, p. 8-9.

⁵⁴⁰ Ball (1968) p. 79.

⁵⁴¹ Ibidem.

⁵⁴² See below 3.5.

⁵⁴³ Ball (1968) pp. 79-80.

the matter by 31 December 1956. After this report had been produced, the OEEC Council made its decision on 13 February 1957 to start negotiations "in order to determine ways and means on the basis of which there could be brought into being a European Free Trade Area, which would, on a multilateral basis, associate the European Common Market with the other member countries of the organization".⁵⁴⁴

The British proposal for a European industrial Free Trade Area was presented by the British Prime Minister Harold Macmillan in November 1956, shortly after the outbreak of the Suez Crisis on 6 November. The proposal has in certain connections been called a "counter-proposal" to the Beyen Plan,⁵⁴⁵ which would be the start of a wider process of tariff-reductions across Europe, and thereby functioned as a bridge between a more integrated Six and the rest of the continent. The proposal had been completed and deposited by the British Government on 3 October 1956 and became known as the Plan G. Although there had been a certain lack of enthusiastic support, the Plan had obtained agreement in the Cabinet as well as of the Conservative Party in the House of Commons. At the time the Common Market project of the Six was still felt as rather doubtful by the British where there was "hope that our formula for an association between the Six and the other countries of Europe [...] would ensure a Free Trade Area for all goods other than foodstuffs" and that this "might prove an acceptable and practical compromise".⁵⁴⁶ Macmillan strongly believed that a Common Market of the Six without the industrial Free Trade Area at the same time, as was proposed by the British, would lead to a "disintegration of any large European policy, eventually involving the collapse of NATO and the existing system of defence".⁵⁴⁷

In a Resolution of February 1957 the OEEC Council decided to "enter into

⁵⁴⁴ Introductory note, Confidential. 803 e/58 m. Stockholm, 15 July 1958. CEAB 5/616. Also Cmnd. 641, p. 7-8.

⁵⁴⁵ Milward (1992) p. 195.

⁵⁴⁶ Macmillan (1971) *Riding the Storm*, p. 431.

⁵⁴⁷ Macmillan (1971) p. 435.

negotiations in order to determine ways and means on the basis of which there could be brought into being a European free trade area, which would, on a multilateral basis, associate the European Common Market with other member countries of the Organisation, and to prepare the necessary instruments".⁵⁴⁸ This was the start of what will be considered as the first phase of the Free Trade Area negotiations. Later, in October of the same year, the OEEC Council "declared its determination to secure the establishment of a European Free Trade Area which would comprise all Member countries of the Organisation; which would associate, on a multilateral basis, the European Economic Community with the other Member countries and which, taking fully into consideration the objectives of the European Economic Community, would in practice take effect parallel with the Treaty of Rome".⁵⁴⁹

3.3 The British Position

The so-called White Paper was submitted by the British Government as a memorandum on 7 February 1957 in which was reaffirmed their view that "an industrial free trade area could be established in Europe" and the same government "proposed that negotiations should be undertaken in the OEEC".⁵⁵⁰ It was further stressed how the negotiations would be based on a successful conclusion between the Six. The White Paper had been given a warm welcome by the Six as well as the other OEEC countries, and the French had shown none of the hostility that was later going to be so apparent. When it came to the task of negotiating, Prime Minister Macmillan was anxious that this should not be restricted to officials only. He therefore proposed the setting-up of a Committee of Ministers which would represent the national governments of all parties involved.⁵⁵¹ The October 1957 session of the OEEC Council also set up an intergovernmental committee at ministerial level

⁵⁴⁸ OEEC, Resolution of the Council, Paris, 14 February 1957. Negotiations for a European Free Trade Area, Cmnd. 641, London, HMSO, December 1959.

⁵⁴⁹ Camps (1959) p. 4-5.

⁵⁵⁰ *A European Free Trade Area*. United Kingdom Memorandum to the Organisation for European Economic Co-operation. February 1957. Cmnd. 72.

⁵⁵¹ Macmillan (1971) p. 433.

to continue the negotiations on a treaty. This committee got the name "Maudling Committee" after the British Paymaster-General⁵⁵² who was appointed as special coordinator on free trade area questions within the British Government.

After the Treaty of Rome had been signed by the Six on 25 March 1957 there had been a certain concern that this would slow down the Free Trade Area negotiations and possibly even turn the interest of the Six over to other areas. According to Macmillan, however, "on the surface, at any rate, the Common Market powers seemed still ready to proceed with the negotiations for the wider area of Free Trade". During the ratification process of the Treaty of Rome, Macmillan and the British Government foresaw two possible dangers. One would be that France should not ratify the Treaty. The second that after all Six had ratified, they would turn their backs on the Free Trade Area. Macmillan, on the other hand, was less worried about the first situation, as he said, "because then we might be able to do an exercise as we did after the E.D.C [...] to pick up the pieces".⁵⁵³

After having been pressed to participate in the ECSC in 1950, something she refused, the United Kingdom was the only country in Europe to have established a special association with the Community. The United Kingdom was also invited to participate in the negotiations for the EEC and Euratom, and for a while this was what she did. However, it became increasingly clear during 1955 that the Spaak Committee was in favour of a common market with common policies and not of the sectoral approach of the ECSC and Euratom. The working group that was set up to advise the Mutual Aid Committee on whether to participate or not reported in 1956, after the disappearance of the United Kingdom from the Spaak Committee, that participation in the long run would have been to the United Kingdom's advantage.⁵⁵⁴ This advice was, however, not taken into consideration at that time

⁵⁵² The British title of Paymaster-General refers to a Minister, or member of the Cabinet, without a Portfolio.

⁵⁵³ Macmillan (1971) pp. 434-436.

⁵⁵⁴ The Mutual Aid Committee consisted of 16 members from the Treasury, the Board of Trade, the Foreign Office and the Bank of England, as well as a

as the result of the same study in the United Kingdom gave quite the opposite result. Nevertheless, after the European Communities had been set up she was the first additional country to seek full membership, in July 1961.

The United Kingdom never thought that France would be able, through the mechanism of European integration, to bind Germany to the West, something they believed only the US would be able to achieve. The United Kingdom was further afraid that an integrated Germany in the Western Europe, without the US, would lead to a German hegemony in Europe. At the seventh meeting of the Mutual Aid Committee it was reported that "Ministers should be reminded that, should the Messina powers achieve economic integration without the United Kingdom, this would mean German hegemony in Europe".⁵⁵⁵ All through the 1950s, therefore, the United Kingdom insisted on keeping an Atlantic framework.

The Plan G, which was later turned into the proposal for a European Free Trade Area, was presented two days after the Venice meeting of the Foreign Ministers of the Six, on 24 July 1956.⁵⁵⁶ It would have meant a multilateral arrangement of all OEEC countries, including the Common Market, and proposed the gradual elimination of industrial tariffs between the markets of Western Europe. Further, it was designed to appeal to German opponents of the Common Market of the Six, to Belgians and Dutch anxious about a Franco-German hegemony, and to

Secretariat of two people. At their seventh meeting, on 17 February 1956, the Committee discussed in brief arrangements for the OEEC ministerial meeting on 24 February, and a visit made by the German Minister of Economics, Professor Erhard. M.A.C.(56) 7th Meeting. Minutes of a Meeting held in Conference Room 'B' Cabinet Office, Great George Street, SW1, on Friday, 17 February 1956, at 10.15 am. PRO CAB 134/1282.

⁵⁵⁵ M.A.C.(56) 7th Meeting. Minutes of a Meeting held in Conference Room 'B' Cabinet Office, Great George Street, SW1, on Friday, 17th February 1956, at 10.15 am. PRO CAB 134/1282.

⁵⁵⁶ Plan G originally sought, on an initiative from the British President of the Board of Trade, Peter Thorneycroft, to find a solution as to how to approach the creation of a "discriminatory trading bloc in western Europe dominated by Germany". For Britain this became even more difficult as the 'bloc' would have the support of the United States. Milward (1992) p. 428.

win American support by offering a larger framework for integration than the Six, where the United Kingdom would be the leading member. The hope was that negotiations with the Six over this proposal would take place before the conclusion of the Treaties of Rome, something which was to prove impossible. However, when the German Bundestag ratified the two Treaties it noted that it was on the condition that the negotiations for the Free Trade Area should then be pursued.⁵⁵⁷ This was due to political criticism over the high tariff proposed for the Common Market.⁵⁵⁸ At the OEEC Council meeting in July 1956 the Secretary-General formally proposed the establishment of an OEEC working party to study possible forms and methods of association between the customs union of the Six and the rest of the OEEC countries, a proposal which was both supported and inspired by the British. The main task would be on how to include the customs union as an element in the Free Trade Area. In August 1956 the Head of the British delegation to the OEEC, Sir Hugh Ellis-Rees, being no real supporter of European integration, expressed how "the odds are heavily against their succeeding by themselves in forming the customs union they have planned".⁵⁵⁹

The United Kingdom insisted that most, or even all, of what the Messina Conference had set out to do could be done within the existing framework of the OEEC, without creating new institutions. To men like Monnet, Spaak and Adenauer, a united Europe could never be achieved, or at least not fast enough, through an organisation like the OEEC. By such an attitude, they were convinced that the United Kingdom wanted no part in Europe and that the Six would have to go ahead without her. In the autumn of the same year two British ministers, Mr. Thorneycroft

⁵⁵⁷ This was due to strong opposition coming mainly from the SPD, as well as prominent figures within the CDU, like Ludwig Erhard, noting that "[T]he collaboration of the Six, which must be extended to those European countries not members of the EEC, rests on an economic basis. We must not concentrate our efforts on the single idea that it is necessary to act in the sense of a political community of the Six by the intermediary of the EEC". Lindberg (1963) p. 130-131.

⁵⁵⁸ Camps (1964) p. 88.

⁵⁵⁹ Milward (1992) p. 431.

and Mr. Macmillan,⁵⁶⁰ issued a statement on a visit to Washington about which products would be included in the proposed Free Trade Area, as well as the plan to eliminate tariffs and quotas.

The British press, industry and public opinion was more than favourable to the proposed Free Trade Area. Such was not the situation on the Continent where there was a feeling that the British initiative might at worst delay the Six in coming to an agreement on the Common Market. There was also some suspicion of the British motives. Monnet's Committee for a United States of Europe nevertheless welcomed the OEEC studies on a Free Trade Area, but made it plain in a declaration of 20 September 1956 that they attached primary importance to a quick agreement by the Six Governments on the Common Market and Euratom. Mr. Spaak expressed similar attitudes on a visit to London in September 1956 where he preferred to push ahead separately with the drafting of the Common Market Treaty. Spaak thought of the Free Trade Area as a supplementary scheme which could best be worked out after agreement had been reached on the Common Market. The British, on the other hand, wanted the two plans to be worked out simultaneously, in order to get the best deal.

3.4 Continental reactions and the British response

The OEEC negotiations were deliberately held up over the autumn of 1956. It was feared that the French Assemblée Nationale could favour the Free Trade Area project and instead either delay or refuse to ratify the Treaty of Rome. Spaak and Monnet feared that the looser British arrangement might in fact have seemed more attractive to many within the Six, in particular in France and Germany.⁵⁶¹ At least

⁵⁶⁰ In January 1957 the British Government was reorganised following the resignation of Sir Anthony Eden. This made Mr. Macmillan Prime Minister, and Mr. Thorneycroft became Chancellor of the Exchequer. Before that Mr. Macmillan had been the Chancellor of Exchequer and Mr. Thorneycroft the President of the Board of Trade.

⁵⁶¹ In Germany the Minister of Economic Affairs, Dr. Ludwig Erhard, was a strong supporter of the Free Trade Area, calling it "one of the many brilliant

it was clear that many "Europeans" felt the British plan might be a helpful supplement to the plans of the Six. To forces among the Six in fear of German domination, the prospect of a close link with the UK would give further welcoming reassurance. This was indeed the case for the Benelux countries, traditionally more economically liberal, favouring a wider European trading arrangement to the high external tariff of the Treaty of Rome. The British initiative has also been seen as contributing to the success of the negotiations on the Treaty of Rome, by giving political and economic reassurance to those who felt the Common Market was too limited, and by implicitly threatening to replace the Common Market. In Germany most of the industry was against the protectionist trade of the Common Market. It therefore welcomed all attempts to widen the area as an association through a free trade area. Furthermore, Germany was happy to see the United Kingdom willing to join such a free trade area.⁵⁶²

During the autumn of 1956 it appeared that the Americans were rethinking their military commitments in Europe, which saw a change in the attitude of Adenauer in particular. Germany depended on the commitment of the US forces in Europe and was reluctant to take any action that might lead to any reduction in the US commitment. Adenauer, therefore, sought to tighten the ties between France, Germany and the United Kingdom. On 25 September 1956 in Hamburg, Adenauer publicly spoke of the need to strengthen the seven nation Western European Union

economic concepts of our time and the best way to draw Britain closer to the Continent". *Financial Times*, 27 September 1956. (Camps (1964) p. 102.) France, on the other hand, was more reserved towards the Common Market project for other reasons. A common market seemed, at the time, too tight a system which had lost its appeal after the failure of the EDC. Furthermore, she was more interested in Euratom at this stage. During the negotiations for a Common Market, therefore, the French had all the time held back, insisting on transitional periods for cutting tariffs, divided into stages. Several escape clauses too had to be introduced. Nevertheless, once the Treaty of Rome had been signed and ratified, the Free Trade Area was going to lose all the appeal it once might have had.

⁵⁶² Speech by Fritz Hellwig, *The Establishment of a Common Market in Europe*, 18 February 1958. Archives of the European Commission, Brussels.

(WEU),⁵⁶³ that "the seven-nation alliance should be revamped into something in the order of a confederation". He further "made it clear that he would like to see the Western European Union converted into a body able to set the broad lines of international and defense policy for its member states".⁵⁶⁴ The federation "must not suffer from the disease of our time - perfectionism" and "its institutions need not always be supranational in nature. We want to choose ways so that nobody is scared off".⁵⁶⁵ It seems clear from these speeches that the official German line was that of a European system to include the United Kingdom. It was therefore important not to frighten her but instead speak publicly about this wish. Few days later Adenauer met with Guy Mollet when they called for the "active participation" of the United Kingdom in the building of a united Europe. They also announced their intentions of striving to give new meaning to such organisations as the OEEC, the Council of Europe and the WEU.

Spaak warned Macmillan, the then Chancellor of Exchequer, in a private talk in January 1957 that the British would never win acceptance of their plan from the French, and hence neither from any other of the Six Common Market countries. France was not interested in sharing her good deal with the United Kingdom, and the latter, in return, wanted her manufacturers to get access to the European market but not to give France any free market access in the United Kingdom for her foodstuffs. As Spaak pointed out, the British plan would allow each country in the Free Trade Area to go on charging its own individual tariffs. Maurice Faure, France's principal spokesman in the Common Market negotiations, insisted that if the United Kingdom rejected the Common Tariff principle then there would be no Free Trade Area.

In Germany there was strong support for a Free Trade Area from the

⁵⁶³ The Western European Union consisted of the Six of the ECSC plus the United Kingdom.

⁵⁶⁴ "Adenauer urges stronger Union of West Europe", *The New York Times*, 2 October 1956.

⁵⁶⁵ *L'Année Politique* 1956, p. 359. In: Camps (1964) p. 104.

Minister of Economics, Ludwig Erhard in particular. Within German governmental circles opinions were, however, highly polarized, typically between the Chancellor and the Foreign Office on the one side, and the Ministry of Economics on the other.⁵⁶⁶ Throughout the 1950s the relations between Adenauer and Erhard became more and more difficult. One reason was their fight over the chancellorship when Adenauer was re-elected for the third time in 1957.⁵⁶⁷ Another, and more far-reaching reason was their differing views on European integration and trade relations. Where Adenauer was concerned with the over-all political considerations, Erhard was more concerned with economics.⁵⁶⁸ Where Adenauer saw the need for a Franco-German cooperation within a European political framework, Erhard was concerned about the needs of German industry. In his view this should be "global rather than restricted to the original six members of the Communities".⁵⁶⁹ One reason was his objection to the price which France was demanding and which Germany had to pay in the negotiations for a common market, something which he called "an economic nonsense".⁵⁷⁰ He also wanted to avoid the division of Western Europe into the Common Market against the rest. "A closed trade area in Western Europe", in Erhard's view, would encourage "regional protectionism".⁵⁷¹ The

⁵⁶⁶ Germany had in its early days a rather unstable administrative system which made the power struggle over control over the European integration process all the more difficult. Due to arrangements by Adenauer, all departments needed approval from the Foreign Office to engage in foreign negotiations. Furthermore, the "constant strife between Adenauer and Erhard [...] had a negative influence on the development of structural and procedural solutions to the demands of Europeanisation". J. J. Hesse and K. H. Goetz, *Early Administrative Adjustment to the European Communities: the Case of the Federal Republic of Germany*. In: Yearbook of European Administrative History 1992, p. 204.

⁵⁶⁷ As Adenauer was re-elected as Chancellor, Erhard was appointed Vice-Chancellor and thereby strengthening his position in the Cabinet, despite "a reluctant Adenauer". Yearbook of European Administrative History 1992, p. 190.

⁵⁶⁸ Yearbook of European Administrative History 1992, p. 184.

⁵⁶⁹ Yearbook of European Administrative History 1992, p. 185.

⁵⁷⁰ Ibidem.

⁵⁷¹ Hanns Jürgen Küsters, *The Federal Republic of Germany and the EEC-Treaty*. In: Enrico Serra (1989) p. 497.

French insisted firmly that a Free Trade Area must have a common external tariff, and a common commercial policy towards all outside countries, including the Commonwealth countries. The Free Trade Area institutions also had to be supranational.⁵⁷²

During 1956 the British Government began to think about making arrangements with the Six in case the latter group succeeded in establishing the EEC and Euratom. However, at the time there were signs of more cooperative attitudes towards Euratom rather than the Common Market. From the British side it was felt that, due to the French interest in Euratom, this would seem like the best and most credible option to support. In that connection the British felt there was a need to make Euratom and the OEEC programs complementary. The British representative who participated in the discussions during the early days of the Spaak Committee had outlined the advantages of a free trade area to his colleagues from the Six. The Six unanimously preferred a customs union among themselves, but the idea of some kind of free trade link between the Six and the United Kingdom was still seen as a possibility. Such a solution had also been mentioned in the Spaak Report as feasible as well as even desirable. At the time around July 1956 the United Kingdom did not appear to have considered participation in a full customs union. On the other hand, she appears to have considered either full membership of a "customs union" based on free trade and excluding agriculture, if the Six failed in forming their own common market, or, in case they did succeed, a free trade area link between the United Kingdom and the customs union.

The formal British Cabinet decision to seek to negotiate a Free Trade Area, consisting of the Six, the United Kingdom, and any other OEEC country wishing to participate, was taken during the autumn of 1956. Macmillan made it clear that he envisaged the customs union of the Six to join the Free Trade Area as one unit, and

⁵⁷² Up until the week before signing the Treaties of Rome, Erhard regarded them as "an economic burden for Europe", claiming that France "cares little for true freedom of trade". He was forced, however, by Adenauer, "to accept compromises in France's favor", despite his belief that it would lead to "disintegration of the worst kind". Willis (1965) p. 265.

added that the British proposals were not intended to replace or lessen the customs union itself, which was the greatest fear of the Six. The Council of Ministers of the OEEC took its decision a few months later, on 13 February 1957, to start negotiations for the setting-up of a Free Trade Area in which the Six would be associated with the rest of the OEEC member States. Out of this meeting an intergovernmental conference was set up at ministerial level as an attempt to reach an early agreement. It started its meetings in October 1957 and became commonly known as the Maudling Committee. (See below, 3.6)

One of the main reasons for the British decision to start negotiations for a Free Trade Area was, in the view of Sir David Eccles, that "unless Britain joined the European Free Trade Area, Germany would 'run the show' in the Common Market".⁵⁷³

3.5 The Changing position of France

At the above mentioned meeting of the OEEC Council in February 1957, the British stressed the importance of the Free Trade Area and the Common Market coming into operation simultaneously, with the same timetable for trade liberalisation, so that discrimination among OEEC countries would be avoided. Spaak, speaking for the Six, resisted any suggestion that might have implied a slowing-down of the Treaty of Rome negotiations or any changes in the draft treaty in order to accommodate the needs of the Free Trade Area. His overriding priority was to push ahead with the Treaty of Rome. The German Minister of Economics, Dr. Erhard, was at this point displaying his personal preference for a free trade area rather than the tighter and more far-reaching Common Market. The French, on the other hand, were sceptical to the Free Trade Area. During the early months of 1957, mistrust and suspicion of British motives flared up on the continent, particularly in France, based on the belief that a strong, if not the primary, motive behind the

⁵⁷³ Sir David Eccles, President of the Board of Trade, in *The Times*, 28 May 1957. EUROPE 1944-1960, COPIE P Généralités (Questions Internationales), VOL.: 193, VUES: 453. Archives of the Ministry of Foreign Affairs, Paris.

British proposal for a free trade area was the desire to undermine the plans of the Six. This wave of suspicion was nourished by the British attempts to persuade Spaak and others to keep the Six from agreeing on a system of tariff reduction and quota removal and on procedures for invoking escape clauses before they could be discussed within the wider group. The British were also strongly opposed to the inclusion of the overseas territories.

In a note from the *Services de Cooperation Economique* of the French Ministry of Foreign Affairs, Mendès-France, member of the Assemblée Nationale representing the Radical Socialists, stressed the fact that, although a proposal for the creation of a free trade area had come from the United Kingdom, it had happened after she had turned down the offer of joining the Common Market of the Six.⁵⁷⁴ The Free Trade Area, according to the United Kingdom, was always assumed to be created around the Common Market, never independent from it. Mendès-France himself would favour a wider Free Trade Area of the Six plus the rest of the OEEC as long as this would remain subordinate to the Common Market and that each state would have its own external tariff. The same arguments were pointed out by the Minister for Foreign Affairs, M. Pineau, to the Assemblée Nationale. It was only, he said, when the Six had shown a willingness to set up a common market that the United Kingdom had looked for a possibility to associate the other members of the OEEC to this. Consequently, he pointed out:

"Si nous renoncions au marché commun, nous devrions donc renoncer aussi à la zone de libre échange, et, par conséquence, à une

⁵⁷⁴ 19 janvier 1957, Services de Cooperation Economique. Note. DE.CE COPIE P, VOL. 627-628. Archives of the Ministry of Foreign Affairs, Paris. Pierre Mendès-France (1907-1982) was the Vice-President of the Radical Socialist Party 1955-57. From June 1954 to February 1955 he served as the Prime Minister of France. Between February and May 1956 he held the position as deputy premier without portfolio in Guy Mollet's Government. He resigned in opposition to de Gaulle's accession to power and in the elections of 1958 he failed to be elected to the Assemblée Nationale. In January 1957 he was, however, still a parliamentary member but not part of the Government.

*association plus étroite de la Grande Bretagne avec l'Europe".*⁵⁷⁵

During the spring of 1957 the British Prime Minister held meetings with his French and German colleagues. He met the French Prime Minister Guy Mollet on 9 March in Paris, and the German Chancellor, Dr. Adenauer, in Bonn on 8 May. The purpose was in to eliminate fears and suspicions that had arisen between the three countries. At the same time, through a number of high level talks, the British also sought to gain more positive French and German support for the Free Trade Area. In London a meeting was held between Maurice Faure, the principal French negotiator of the Treaty of Rome and the French delegate to the OEEC Council, Mr. Thorneycroft, the then British Chancellor of Exchequer, and the President of the Board of Trade, Mr. David Eccles. On the continent rumours were spreading that the United Kingdom was seeking to "torpedo" the Common Market. At the same time, in the United Kingdom, there was a suspicion "that France, having got what it wanted in the Treaty of Rome, had lost interest in the free trade area".⁵⁷⁶

The meetings referred to above resulted in the French, with the support of the Germans, requesting a postponement of the meeting of the OEEC Council scheduled for July 1957, at which the British hoped to make a definitive progress on the Free Trade Area. The French wanted the postponement of the meeting due to the fact that the ratification debate in the Assemblée Nationale on the Treaties of Rome was planned for that same July. They feared that if the Free Trade Area was attracting attention at the same time the chances of ratification might be prejudiced, and used by the group that was against any move towards freer trade. At the same time the British received assurances from both the French and the Germans that once French ratification had been completed the two Governments would be ready for serious negotiations on a free trade area. However, France made it quite clear that she could

⁵⁷⁵ Assemblée Nationale, Compte Rendu Analytique Officiel, 1ère Seance 22 janvier 1957. DE.CE COPIE P, VOL. 627-628. Archives of the Ministry of Foreign Affairs, Paris. "If we renounce the Common Market, we should also renounce the Free Trade Area and, as a consequence, a closer association between Great Britain and Europe." Own translation.

⁵⁷⁶ Camps (1964) p. 122.

not accept fewer guarantees in the Free Trade Area than she had done in the Common Market.

In May 1957, the President of the Board of Trade, Sir David Eccles, expressed in a speech that "although it is not military or hostile in its intent - six countries in Europe have signed a treaty to do exactly what, for hundreds of years, we have always said we could not see done with safety to our own country. [...] If, when the common market of the Six comes about, we were left outside and made no effort to join it and liberalise it and make it look outward instead of inwards, the Germans would run it [...] the present German Government under Dr. Adenauer knows it and fears it and does not want to do it."⁵⁷⁷ These remarks, which were meant to explain why a free trade area would be more important politically than economically, sent off alarms to France with a confirmation of the British distrust of the Six and a reaffirmation that the British still thought in terms of holding the balance of power on the Continent. The fact that the British agreed to a postponement of the OEEC meeting indicates a certain importance put into the setting-up of the Common Market. In return it was agreed "that the two Governments [the French and the German] would do what they could to ensure that the negotiations in the O.E.E.C. for the creation of the Free Trade Area should be carried forward to a satisfactory conclusion".⁵⁷⁸

Later the same year, on 7 June 1957, Sir David Eccles gave his support to the Treaty of Rome in a speech at the British Chamber of Commerce in Paris by saying: "My Government welcomes the initiatives of France and the other five Powers who have agreed upon a revolutionary change in their commercial and financial policies. [...] This is one of the masterpieces of history - something above and beyond the ordinary scope of international arrangements. [...] When the experts explain to us the Treaty of Rome in terms of economics we see beyond the tariffs

⁵⁷⁷ "German Trade Lead Danger", The Times, 28 May 1957, p. 4. Sir David Eccles speaking at the inaugural ceremony of the nineteenth congress of the Federation of the Commonwealth and British Empire Chambers of Commerce.

⁵⁷⁸ Camps (1964) p. 123, note 50. Also in Cmnd. 648.

and the quotas, for we know that Europe is feeling its way to something much more fundamental than the exchange of goods and money." However, he continued: "granted that European solidarity and peace is the purpose of the Treaty of Rome, how illusory might this be if the result were to divide Europe. [...] If the Common Market came into existence without the Free Trade Area then Western Europe [...] might again fly apart."⁵⁷⁹

The French Assemblée Nationale ratified the Treaties of Rome in July 1957 which was an event the British thought would give great hopes for the Free Trade Area negotiations. What was, maybe, not quite understood in the United Kingdom was the fact that most of the French, as well as the so-called "Europeans" of the Six had, from then on, their attention turned towards the building of the institutions of the EEC, and were thereby not so interested in the Free Trade Area. During the autumn of 1957 the ministers and representatives of the Six met several times in the form of the Interim Committee.⁵⁸⁰ Already at that time men like Hallstein and Marjolin, appointed by their governments to the European Commission, were greatly involved in the discussions.

The Interim Committee, which came into being after the signing of the Treaty of Rome, consisting of the heads of delegation to the Intergovernmental Conference, played a certain role in the preparation and coordination of the Six until the Treaty came into force. One of its tasks, which was quite significant during the Free Trade Area negotiations, was "the coordination of the attitude of the six governments in other international organizations".⁵⁸¹ Its first meeting was held in October 1957

⁵⁷⁹ Camps (1964) pp. 124-125.

⁵⁸⁰ The Interim Committee was set up after the Treaty of Rome had been signed for the ministers from the six countries to meet before the Treaty entered into effect. It became a forum for discussing questions concerning the new Community as well as other questions like the position to be taken in the Free Trade Area negotiations. In: Camps (1964) p. 130n.

⁵⁸¹ L'Institut Royal des Relations Internationales (IRRI), "Le Marche Commun et l'Euratom", *Chronique de Politique Etrangere*, X (July-November 1957), pp. 444-445. In: Lindberg (1963) p. 141.

when it also helped preparing the position of the Six in the Maudling Committee. The French had, however, already proposed the Six to meet to discuss the position to be adopted in the Free Trade Area.⁵⁸² Although there has not been found too much evidence of the work of the Interim Committee neither in the literature, apart from briefly in Lindberg and Camps, nor in the archive material, it does seem clear that it played a certain role in creating and maintaining a common front among the Six. However, its work was conducted mainly behind the scenes but helped to keep the Six united in the Free Trade Area negotiations during the autumn of 1957.⁵⁸³

In France much of industry had originally been opposed to the setting-up of the Common Market, fearing the consequences of the Treaty of Rome coming into effect. Furthermore, there was strong opposition among the *Patronat* as well as other influential industrial groups to the creation of a free trade area around the Common Market. In the United Kingdom the same groups gave such a project great support. The French were faced with a problem of two aspects. Firstly, they feared for the special concessions given to them in the EEC. Secondly, they thought the Free Trade Area would be too advantageous to the United Kingdom. This would be particularly so in the area of agriculture. After the signing of the Treaties of Rome a common front was created between the Six, presumably through discussions by the national delegations in the Interim Committee. Therefore, when the British presented their White Paper, the lack of support was crystalised in all six countries, and the British plan was thought to be too simplified.

⁵⁸² Lindberg (1963) p. 141.

⁵⁸³ Only twice in all the masses of archive material that we have had available for this thesis has the Interim Committee been mentioned. One was concerning Staff Regulations (Doc. MAE 1305/57, Bruxelles, 24 novembre 1958, 1233 f/58 mts., CEAB 1/1328), the other had to do with the Free Trade Area negotiations (Premier Memorandum de la Commission de la CEE au sujet des negotiations relatives a la creation d'une zone de libre echange, 19 mars 1958, 74/58-F, CEAB 5/620). The latter was a confidential document from the European Commission to the Council of Ministers concerning the Commission's views on the proposed Free Trade Area, based upon a study by the Interim Committee. No more specific reference was made, however, to this Committee or its views regarding the Free Trade Area in this document.

To the French one of the main issues of the Free Trade Area negotiations was that, since the British could not accept the Treaty of Rome, one had to make sure that the Free Trade Area became something different. Inevitably, it also had to involve some sort of discrimination against the other countries of the OEEC. This was, further, an issue which was brought forward during the first substantive discussions in the Intergovernmental Committee, the so-called Maudling Committee, in November 1957. The French delegate, Maurice Faure, was rather explicit about the reservations of the French Government and stressed the importance of having a "difference" between the two trade arrangements, the Free Trade Area and the Common Market. It was also pointed out by the French that a free trade area would not be fully satisfactory without a common external tariff. In Maurice Faure's view "unless the Treaty of Association between the Six and the other OEEC countries was roughly similar to the Treaty of Rome and like that treaty ensured an adequate 'balance' between commitments of different kinds, the trade advantages would have to be different and more limited than those enjoyed by the members of the Community".⁵⁸⁴ The question which would have to be answered to the French people was why some countries should be able to enjoy the advantages of the Treaty of Rome without accepting its obligations.

Contrary to certain negative attitudes towards the Free Trade Area from the French during 1957, the Dutch Secretary of State for European integration, in a debate in the Dutch Parliament on foreign policies, had identified the Free Trade Area as one of the most urgent problems confronting the European Commission. The Dutch Government had already underlined several times the importance of the setting-up an area of free trade, both politically and economically. Another important element would be to present the European Community as a single unit to its partners. Furthermore, the EEC would have to be committed to an association with the OEEC in the interest of Europe as a whole.⁵⁸⁵

⁵⁸⁴ Camps (1964) p. 137.

⁵⁸⁵ The French Embassy in the Netherlands, The Hague, 11 February 1958. Report from M. de Beauverger, French Ambassador, to the Minister of Foreign Affairs, M. Pineau. EUROPE 1944-1960, COPIE P, Généralités [Questions

The First General Report, of 17 September 1958, from the Commission made it known how the French Government already in February 1958 informed the other five Governments and the European Commission of the fact that they disagreed "as regards the scope of the Association and its rhythm, with the original British concepts which had served as basis for the work of the O.E.E.C".⁵⁸⁶ As a result the Commission presented its First Memorandum in March the same year, attempting to make the negotiations acceptable to all parties. (See below, 4.4)

In the beginning of 1958 the British modified the White Paper which, however, still excluded the agricultural sector. As this was something which was received rather coolly by the Six, the other OEEC countries started circulating papers on agriculture. Nevertheless, it was only Denmark that was interested in including this in the Free Trade Area.

In March 1958 there came a new proposal from the French, which brought the Maudling Committee to a halt until the plan had been decided on by the Six. The French suggested trade arrangements to be made product by product, and country by country, and purely industry based. Hard pressed industries should further wait for a harmonisation of tariffs to have been put into force. Moreover, the proposal suggested a "*décalage*", or time gap where the "freeing of trade within the Community [would] start three years before that in the wider group", a group which was renamed the "Union for European Economic Co-operation".⁵⁸⁷ In its proposal, France also accepted the British position of treating agriculture separately, but on the other hand argued in return for some Continental access to the Commonwealth markets. A proposal of this kind only made the chances for an agreement more unlikely than ever. To the rest of the Six it was felt as if the French proposals would take the process in a backwards direction.

Internationales], VOL. 193. Archives of the Ministry of Foreign Affairs, Paris.

⁵⁸⁶ EEC - First General Report 1958, p. 115.

⁵⁸⁷ Camps (1964) p. 144.

To the United Kingdom, France was the main obstacle for the Free Trade Area to succeed. Her hope was to get Germany on her side to help bring France around. In April 1958 the French Government fell. After that followed six weeks of near civil war which meant that no decision of any importance affecting France could be taken, and the whole process of the Free Trade Area, as well as most other things, was brought to a halt. Before the collapse of the government, the French had been busy working out their own free trade area proposal. As a result the British started bilateral negotiations with the rest of the Six, which made France think that the United Kingdom was trying to isolate her altogether. On 1 June 1958 General de Gaulle came to power in France, shifting the priority of the French Government away from the Free Trade Area. It was hoped in London that the chances of setting-up a free trade area would increase. General de Gaulle, who was not deeply in favour of the Treaty of Rome, was thought of as one who would rather favour a looser and wider system, which the British thought the Free Trade Area would be. Nevertheless, the General was "more interested in political questions than in economic matters, which he tended to leave to the 'technicians'".⁵⁸⁸ Adenauer, on his side, put all his efforts into strengthening the Franco-German relationship and the proposed Free Trade Area suffered even more. As soon as de Gaulle had taken up office, Harold Macmillan, by then Prime Minister, initiated contact between the two governments, with the Free Trade Area in mind. In a letter to de Gaulle, Macmillan made his views clear that "unless real progress can be made in the course of July there is no hope of introducing a Free Trade Area in parallel with the Treaty of Rome on January 1, 1959".⁵⁸⁹ In his reply, however, de Gaulle pointed out how "we must find means of arriving there without destroying the equilibrium of France's economy and finances".⁵⁹⁰ To de Gaulle the Free Trade Area was an economic problem which meant he did not appreciate totally all the political implications.

⁵⁸⁸ Camps (1964) p. 152.

⁵⁸⁹ Letter from Macmillan to de Gaulle of 30 June 1958. Macmillan (1971) p. 449.

⁵⁹⁰ Letter from de Gaulle to Macmillan, received on 5 July 1958. Macmillan (1971) p. 450.

At the end of September 1958, at a meeting of the Council of Ministers of the Six in Venice, it was agreed, during the discussions of the Ockrent Report,⁵⁹¹ to accept the view of the French that all decisions in the Free Trade Area should be taken unanimously. Agreement was reached on the Ockrent Report in October 1958, which, up to that point, was "the most comprehensive exposition of the 'Community' point of view made during the negotiations".⁵⁹² The Six accepted the French view that institutional arrangements in the Free Trade Area, or the European Economic Association, as they preferred to call it, should be analogous to those of the OEEC, with the Council acting on unanimity.⁵⁹³ The United Kingdom, in this case, was in favour of majority voting.

During a visit by M. Wormser of the French delegation to London in October 1958 the problems of institutions and origin of goods had been on the agenda. M. Wormser had been "struck by a certain abrupt change in the British attitude".⁵⁹⁴ The United Kingdom normally agreed to the idea that the establishment of the Free Trade Area could only be done with a certain amount of harmonization of tariffs. During this meeting the feeling came across that she wanted to "entrench herself behind a sort of dogma of free tariffs".⁵⁹⁵ As seen by the French delegation, this was a contradiction to the whole concept of the Free Trade Area. The French delegation, further, felt that the British were taking a position which seemingly

⁵⁹¹ The Ockrent Report was another name for the *Memorandum from the European Economic Community*, which is to be found in the Blue Book or the *Negotiations for a European Free Trade Area*, Cmnd. 648, January 1959. The report was the result of a committee from the Six led by the Belgian permanent delegate to the OEEC, Mr. Roger Ockrent.

⁵⁹² Camps (1964) p. 157.

⁵⁹³ The name "European Economic Association" was chosen to indicate that the arrangement under discussion at this stage was something different from the original free trade area plan. Camps (1964) p. 158.

⁵⁹⁴ "M. Wormser a été frappé par un revirement qui lui a paru s'être produit dans l'attitude britannique". Own translation.

⁵⁹⁵ "se retrancher derrière une sorte de dogme de la liberté tarifaire". Own translation.

created a new situation. During the spring of 1958 the Commission had begun to play a coordinated role behind the scenes. This was a new situation as the Six had earlier made very little attempt to speak with one voice, apart from a few attempts of the Interim Committee during the autumn 1957.⁶⁰⁰ To the French there was a conflict between "creating unity in Europe" and "encouraging the freeing of trade on a world-wide basis". The British, on the other hand, believed these two ideas could go hand in hand.⁶⁰¹ Between the failure of the EDC in August 1954 and up to the signing of the Treaty of Rome, the French were interested in a free trade area, probably as a means to play down the supranational elements of the Community. As soon as the Treaty of Rome had been signed, the Free Trade Area proposal had to be played down somewhat in order to secure the French ratification. During this period it became important to tell the French people how the Treaty of Rome created something more than a free trade area, something more which would not apply to the other countries of the OEEC. After the ratification of the Treaty of Rome the French became more interested in the new Community, the setting-up of its institutions and in making them work. The views on the Free Trade Area adopted by the European Commission during 1959 were to a large extent shared by the French Government.⁶⁰²

⁶⁰⁰ As Miriam Camps has put it "Until the spring of 1958, when the Commission began to play a coordinating role behind the scenes, there was little real attempt on the part of the Six to speak with one voice." Camps (1964) p. 169.

⁶⁰¹ Camps (1964) pp. 168-170.

⁶⁰² During the spring and summer of 1958, when to a large extent, the negative position of the French towards the Free Trade Area appeared more strongly, the idea seemed rather unpopular to the French people. The French were generally rather sceptical towards the British, and were unwilling to give up or share the number of concessions granted her in the Treaty of Rome. Furthermore, President de Gaulle was in great need of domestic support in the forthcoming elections and referendum. Hence, France had good reasons to promote the Common Market strongly. The European Commission, loyal to the Treaty of Rome and lead by more "European" ideals, realized the problems of linking the Common Market to a looser and broader arrangement of free trade, something which could "undermine the tighter construction of the Six". Camps (1964) p. 167. Although de Gaulle was to enjoy stronger influence during the 1960s, it seems clear that he could not be overlooked by the Commission even before that.

"would create an ambiguity on the significance of the whole negotiations".⁵⁹⁶ It had to be accepted, in the French view, that the European Economic Association had to practice a "*préférence Européenne*".⁵⁹⁷

On 14 November 1958 the Maudling Committee met to discuss the Ockrent Report after which the French Minister of Information, Jacques Soustelle, announced to the press:

*"Il est apparu à la France qu'il n'était pas possible de créer la zone de libre-échange, comme l'avaient souhaité les Britanniques, c'est-à-dire par l'établissement du libre-échange entre les six pays du Marché commun et les onze autres pays de l'O.E.C.E., et cela faute d'un tarif douanier unique à la lisière des dix-sept pays et faute d'harmonisation dans les domaines économique et social."*⁵⁹⁸

This statement broke off what we have called the first phase of the Free Trade Area negotiations without, apparently, the French really meaning to. The problem had been that France, mainly, had been opposed to linking the Common Market with another arrangement that gave comparable trade benefits but with less far-reaching commitments to common tariffs, common policies, and to common actions. "The 'European' case against the Free Trade Area was that, regardless of intent, the existence of the Free Trade Area would tend to undermine the tighter construction of the Six."⁵⁹⁹

The British, as Miriam Camps has written, had "misjudged the strength of the movement towards greater unity among the Six in the autumn of 1955". Furthermore, they had underrated the extent to which the Treaty of Rome in fact

⁵⁹⁶ "*fait planer une équivoque sur la signification de l'ensemble de la négociation*". Own translation.

⁵⁹⁷ EEC, Commission, Service Juridique Commun, Section Archives. 29th Meeting of Coreper, 17 October 1958 (doc. 1155). BAC 24/1967, No. 124.

⁵⁹⁸ L'Année Politique 1958, p. 428. Translation from Camps (1964) p. 165: "it was not possible to form a free trade area as had been wished by the British, that is to say by having free trade between the six countries of the Common Market and the eleven other countries of the OEEC, without a common external tariff and without harmonization in the economic and social spheres."

⁵⁹⁹ Camps (1964) p. 167.

3.6 The Maudling Committee

It was in the British hope and interest that the Common Market and the Free Trade Area would come into force more or less simultaneously, preferably both on 1 January 1959. This was a wish which had already been established by the OEEC Council in a Resolution of February 1957.⁶⁰³ To the British it was important to be present from the very first day of the Common Market being in operation. Otherwise, she could risk the Six making too many special arrangements among themselves, or even deciding not to join the Free Trade Area after all. Rapid progress would therefore have to be made after the French ratification of the Treaty of Rome in July 1957. Before the French ratification, the Six had pushed the Free Trade Area negotiations somewhat to the side. The reason for this was a fear that the French would decide that with a free trade area of OEEC countries, a Common Market would be neither necessary nor desirable.

There was a certain mood to be observed within the Six countries for an agreement with the British to be reached for political reasons. This was in particular important to the Benelux countries more than the others, who were anxious also to "weaken the 'protectionist' colouration of the Common Market".⁶⁰⁴ However, by autumn 1957 there was such a commitment to the Treaty of Rome that any agreement with the British would have to come as second priority. There was the basic principle of the Six that nothing should be done to weaken their cohesiveness, or the integrity of the Treaty of Rome.

At the OEEC ministerial meeting in Paris on 16-17 October 1957, a meeting which had been postponed from July earlier that year, the OEEC Council agreed to

⁶⁰³ "secure the establishment of a European Free Trade Area which would comprise all Member countries of the Organisation; which would associate, on a multi-lateral basis, the European Economic Community with the other Member countries; and, which, taking fully into consideration the objectives of the European Economic Community, would in practice take effect parallel with the Treaty of Rome." Resolution by the OEEC Council, February 1957. In: Camps (1964) p. 135.

⁶⁰⁴ Camps (1964) p. 132.

set up an Intergovernmental Committee at ministerial level to study the ways of forming a free trade area. The representative and chief negotiator of the British Government, Mr. Reginald Maudling, was elected chairman of this committee.⁶⁰⁵ Its first substantive discussions were held in November 1957, where Maurice Faure, the French representative to the Intergovernmental Committee, started off by making a statement about the French Government's reservations on the whole proposal. The French Government felt strongly that the Free Trade Area agreement should be more or less identical to the Treaty of Rome as it was believed that a free trade area without a common external tariff would not be satisfactory. Another element was the fact that the Free Trade Area lacked, according to the French people, the political appeal of the Common Market. According to Maurice Faure, the French were concerned with "the importance of having a 'difference' between the trade arrangements in the free trade area and the Common Market". Further, he indicated the fact that the former "would not be fully satisfactory unless it entailed [...] a common external tariff with as small as possible a number of derogations from this rule".⁶⁰⁶

The Resolution produced by the Council of the OEEC on 17 October 1957 once again expressed a determination to establish a Free Trade Area to take effect parallel to the Treaty of Rome on 1 January 1959. Progress in the negotiations, it said, seemed to indicate that a basis existed for a successful conclusion of the negotiations.⁶⁰⁷ In a Draft Resolution it was suggested the establishment of a Free Trade Area Commission, consisting of seven members. These would be appointed by the OEEC Council, and the Free Trade Area Commission would "act as coordinator of the negotiations for the European Free Trade Area Convention".⁶⁰⁸

⁶⁰⁵ Reginald Maudling was, before his appointment to the Intergovernmental Committee in August 1957, the British Minister for European Affairs. To find such a title in Britain as early as this should indicate a certain importance given to these matters, despite the positions taken.

⁶⁰⁶ Camps (1964) pp. 136-137.

⁶⁰⁷ Introductory note. Confidential. 803 e/58 m. CEAB 5/616.

⁶⁰⁸ Draft Resolution. 803 e/58 m. CEAB 5/616.

The Maudling Committee, as the OEEC Intergovernmental Committee came to be called, was principally concerned with three problems. One was the lack of harmonisation of internal social and economic policies. Secondly, institutional questions, and thirdly, problems arising from the fact that in the Free Trade Area there would not be a common external tariff nor a common commercial policy.

With the coming into force of the Treaty of Rome on 1 January 1958 the Six wanted to make it clear that the Treaty created a new situation, and also to force the other OEEC countries to accept this, as well as a difference in treatment. In February 1958 Walter Hallstein, by then the President of the European Commission, began attending the meetings of the Maudling Committee. Nevertheless, the role of the Commission in the negotiations was still rather unclear, much due to the fact that the negotiations had been initiated before the entry into force of the Treaty of Rome. Under different circumstances the Commission would most likely have borne the main responsibility of negotiating with the other OEEC countries on behalf of the Community. Despite being mentioned in Article 228 EEC the fact that the Commission had been given negotiating power, it was, however, never given the responsibility for the Free Trade Area negotiations. On the other hand, it very early in the process started formulating its own "Community" philosophy on the negotiations, something which helped keep the Six together despite a number of differences of opinion.⁶⁰⁹

In March 1958 the Maudling Committee went into recess while the Six discussed among themselves some new proposals from the French. These proposals had to be agreed to, modified, or rejected before the Maudling Committee could meet again for further discussions. A month earlier, in February 1958, the French Economic Council had unanimously rejected the Free Trade Area currently under discussion in the Maudling Committee. These ideas were circulated to the rest of the Six in a memorandum and Maurice Faure travelled to the capitals of the Common Market explaining the proposal. The other countries, however, felt it was more like

⁶⁰⁹ Camps (1964) p. 148.

going a step backwards. The problem in France, as the Government saw it, was to explain to the people why most of the advantages that would derive from the Treaty of Rome should be made available to the member countries of the OEEC who would not accept the obligations of the Common Market.

On 28 March 1958 Mr. Maudling, in a speech to the House of Commons, said: "People in Europe must not assume that if there is a Common Market but no Free Trade Area, everything else - E.P.U., O.E.E.C., and so on - will go on as before. It certainly will not."⁶¹⁰

At the meeting of the Maudling Committee in March 1958, the Italian Minister of Foreign Trade, Signor Guido Carli, came up with a comprehensive plan based on the use of compensatory charges. According to this plan, goods would be given free movement within the area as long as the external tariff applied by the area countries would be within a specified margin. The British, however, objected to this with the claim that it would only permit free trade within the area for goods for which the external tariffs were either close together or the same. This would, in turn, put pressure on a tariff harmonisation which the British opposed for various reasons. They were determined to preserve their tariff autonomy, as well as their preferences for the Commonwealth countries.⁶¹¹ The so-called Carli Plan was presented as an attempt to "break the deadlock between the French and the British with a proposal involving compensatory taxes".⁶¹²

One of the main protagonists from the Commission, President Walter Hallstein, has later had to be credited with much of the success of the Free Trade Area negotiations. Earlier in the year, on 20 March 1958, he spoke at the first session of the European Parliamentary Assembly in Strasbourg. His main theme was the Community's external relations where he "flatly rejected the charge which was

⁶¹⁰ Hansard, House of Commons, 28 March 1958. In: Camps (1964) p. 146n.

⁶¹¹ Camps (1964) p. 142-143.

⁶¹² Lindberg (1963) p. 138.

then being made with some fervour by the British, the Scandinavians, and the Swiss that unless the free trade area was formed, the Six would have split Western Europe and would be 'discriminating' against the other members of the OEEC".⁶¹³ He pointed out that "[W]e should state clearly that we reject this charge of discrimination and that therefore the argument about division which has been built up on it is invalid". He continued: "The European Economic Community represents one situation. [...] It is the harmonization, co-ordination, even unification of major aspects of economic policy and profoundly modifies the economic policy of the six States."⁶¹⁴ With this in mind he told the European Parliamentary Assembly that an association with the other members of the OEEC would be tolerated only as long as the Community would be left inviolate. With regards to discrimination he further humorously compared the Community to a marriage in that "*[L]orsque deux personnes se marient, cela représente aussi une discrimination pour toutes les autres.*"⁶¹⁵

By the time the European Parliamentary Assembly met again in June 1958, the Commission had made its views known actively in the negotiations. The Commissioner responsible for external relations, Jean Rey, also outlined in detail the Commission's view to the Parliamentary Assembly. Despite the timetable already set out, the Commission did not see the possibility of the Free Trade Area negotiations completed, and its Treaty ratified, by the end of 1958.

In France, General de Gaulle had taken over the power on 1 June 1958. His "technicians", with whom he tended to leave economic questions, were more or less opposed to the Free Trade Area plan presented by the British. The issue was as well seen as politically too risky for the President at the time, as he had just taken over

⁶¹³ Camps (1964) 149.

⁶¹⁴ EEC Commission, Statement by the President of the Commission, Walter Hallstein, to the European Parliamentary Assembly, 20 March 1958. Archives of the European Commission, Brussels.

⁶¹⁵ European Parliamentary Assembly Debates, 13 January 1959. A remark which was followed by laughter. "When two people get married, this also represents a discrimination towards all others." Own translation.

that position. In Germany, on the other hand, the Free Trade Area plan had support of the Finance Minister Dr. Erhard, and the majority of the representatives for German business and financial interests. Nevertheless, on a visit to Germany, Macmillan was "alarmed to find that the growing Franco-German rapprochement" had led German officials urge Chancellor Adenauer to "take less friendly view towards the plan".⁶¹⁶

From 19 November 1958 a second Maudling Committee was proposed set up to sit in a permanent session, receiving the sector reports on which the Six were working. This Committee was further meant to have the power to take decisions that would be binding on national governments, offering room for agreement and further progress. By the end of 1958, the Six had accepted the French view that the institutional arrangement of the Free Trade Area Association should be analogous to those of the OEEC, with a Council acting only by unanimity. During the Maudling Committee negotiations, however, the attitude of the French Government was making an agreement on an OEEC-wide arrangement impossible. As Miriam Camps has put it: "The French and some members of the Commission were coming to believe that, with the recovery from the war and the return to *de facto* convertibility, the 'Europe of the Seventeen' had little validity."⁶¹⁷

The question of the institutional setting-of the Free Trade Area was a matter of discussion as well in the Maudling Committee. What caused most concern in this connection was, however, the voting procedures. According to the Ockrent Report, which also was the position of the Six, all voting in an eventual Free Trade Association should be unanimous. The British, on the other hand, changed their position in favour of voting by qualified majority in certain areas. Their proposal was that, assuming that all seventeen members of the OEEC was to become members of the Free Trade Area, the qualified majority ought to be twelve. This would allow the Six to veto any decision but impose none.

⁶¹⁶ Macmillan (1971) p. 454.

⁶¹⁷ Camps (1960) *Division in Europe*, p. 17.

The Community members tried to play down the role of the institutions of an eventual Free Trade Association. Further, there was a fear of the motives of the British in creating a free trade area. It was not, it was felt, as a way "into Europe", but more as a way of breaking down trade barriers.⁶¹⁸

4. THE EUROPEAN COMMISSION AND ITS ROLE IN THE FREE TRADE AREA NEGOTIATIONS

When discussing the role of the European Commission in the Free Trade Area negotiations, one must bear in mind the fact that the EEC did not come into operation until 1 January 1958. The Free Trade Area negotiations, however, had started already in the autumn of 1956. The Commission as an established body, therefore, only took part in the official negotiations during its last year. Nevertheless, the role of the Commission in this type of negotiation was strongly kept in mind while negotiating the Treaty of Rome, and, once set up, the institution tried to make as big an impact as possible. The part of the negotiations for a free trade area that will be discussed here was what will be referred to as the second phase. The first phase broke down in November 1958 as a consequence of a statement from France, cited above. In the second phase, however, the Commission started playing a more important role, trying to present a common position of the Six. It was initiated in the beginning of December 1958 with the Council of Ministers charging the Commission to present a report by 1 March 1959, and lasted until the Second Memorandum from the Commission was published in September 1959. This Memorandum quite clearly showed the Commission turning away from the Free Trade Area solution.

⁶¹⁸ Miriam Camps also pointed out the fear the European Commission had at the time of the "mondialization" of the Community which many on the Continent felt would be the result of British membership. Camps (1964) p. 160. A reasonable translation of the word "mondialization" in this context will be a 'thinning out and weakening', as well as extending the Community to apply to the rest of the world, making it in fact less significant.

4.1 Article 228 and Article 238 of the Treaty of Rome

The authors of the Treaty of Rome had foreseen, and made provision for, the Community entering into various types and degrees of agreements and treaties with third States and international organisations. These could range from mere commercial agreements between the Community and one or more States, to a much closer association of similar parties. According to the Commission President Walter Hallstein, this would take the form of two different cases only. The first being when the negotiations had been started as well as completed by the national Governments before the Treaty of Rome had come into force. The other would be when negotiations did not start until after the entering into force of the Treaty. In this latter situation, he argued, it would no doubt be the Commission's task to conduct the negotiations. The two articles of the Treaty of Rome covering such situations were Article 228 and Article 238. No clause of the Treaty, however, covered the situation of the Free Trade Area negotiations, which had started at an intergovernmental level. Before the negotiations were concluded the situation changed with the Treaty coming into being.⁶¹⁹

Article 228 of the Treaty of Rome stated: "Where this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organisation, such agreements shall be negotiated by the Commission. Subject to the powers conferred upon the Commission in this field, such agreements shall be concluded by the Council after the Assembly has been consulted in the cases provided for by this Treaty." According to the understanding of this article, it was the Commission's role to conduct negotiations on behalf of the Community when the latter entered into an agreement with one or more States, or an international organisation.⁶²⁰ It was the Commission which was the international personality of the Community. Article 228 covered all negotiations by the EEC vis-à-vis one or

⁶¹⁹ Walter Hallstein in a Statement to the European Parliamentary Assembly, Strasbourg, 20 March 1958. Archives of the European Commission, Brussels.

⁶²⁰ Mégret et. al. (1981) *Le Droit de la Communauté Economique Européenne*, Volume 12 relations extérieures, Université Libre de Bruxelles, pp. 20-63.

more subjects of public international law, and the negotiating power had been given to the Commission. The power to conclude the agreements however, which in international law would be the ratification, was given to the Council of Ministers. Furthermore, it was to be understood, in case of an above mentioned type of agreement, that it was not the member States that would be the parties but the Community itself as a single entity. This last point supports the fact that such negotiations should be conducted by the Commission, in the name of the Community.

Article 238 of the Treaty of Rome read: "The Community may conclude with a third country, a union of States or an international organisation agreements creating an association embodying reciprocal rights and obligations, joint actions and appropriate forms of procedure. Such agreements shall be concluded by the Council by a unanimous decision and after consulting the Assembly." This article gave specific roles to both the Council and to the Assembly but did not mention the Commission. Neither did it specify which institution was supposed to carry out the negotiations on behalf of the Community.

Where Article 228 talks about an international agreement of the more commercial type, Article 238 deals with the Community entering an agreement leading to a certain type of association. However, as Mégret pointed out, the type of association has not been very clearly defined. The way Walter Hallstein saw it, *"l'association, c'est l'adhésion moins un et l'accord commercial plus un"*.⁶²¹ There are several ways of regarding an association and so also the Free Trade Area. However, what is certain is that it would have been the juridical framework of the economic relations between the Community and one or more third States, which would remain external to the Community. In Article 238 it was already set out that such an association was to be concluded by the Council of Ministers "by a unanimous decision after consulting the Assembly". Nevertheless, the way Mégret understood this, it must be read with the meaning that the association has been

⁶²¹ Mégret (1981) p. 86. "association is membership minus one and a commercial agreement plus one". Own translation.

negotiated by the Commission.⁶²²

As the Free Trade Area negotiations started before the Commission had been set up, the negotiations were carried out in the name of the national governments where the Six of the ECSC negotiated mostly together as one group. This, at least, was their aim. The OEEC carried the framework of the negotiations, and after the Messina Conference, the Six would at times be represented by the Belgian Foreign Minister, Paul-Henri Spaak, who had been appointed to lead the intergovernmental committee for the setting-up of the Common Market and Euratom. In the negotiations with the British on the inclusion of agriculture in the Free Trade Area, several meetings were held between the British and Mr. Spaak.

The Interim Committee had decided to classify the Free Trade Area negotiations as an association of other countries to the Community, and not as an accord with third States.⁶²³ This way the discussions fell under Article 238 which did not specifically mention whose role it should be to conduct the negotiations. This could possibly be a convenient way of excluding or including the Commission according to the wishes of the Council of Ministers. It could also be possible to leave it up to the Commission itself to take an initiative, which seems to be what happened. The Commission, on its side, took an initiative already in March 1958 when President Hallstein addressed the EPA presenting the Commission's views on a free trade area. This was in fact done already three days before important members of the Commission staff, such as the Directors General and the Executive Secretary, were appointed on 23 March.

The Spaak Report introduced a number of useful new ideas into the institutional discussion. It emphasized the importance of establishing procedures and the institutional means for arriving at later decisions and by ensuring that these

⁶²² Mégret (1981) pp. 84-93.

⁶²³ Lindberg (1963) p. 143. This decision must have been taken before or on 25 January 1958 after which the members of the Interim Committee called themselves Permanent Representatives.

procedures safeguarded both objectivity and national interests, and made it possible for the treaty to be a framework treaty. The Spaak Report also left substantially more of the details of action for later formulation by the Commission than did the Treaty of Rome.

4.2 The Commission establishing its role in the Free Trade Area negotiations

Although the role of the European Commission was not clear either to itself or to the member States during early 1958, opinions on the matter had been formed for the most part already. The Secretary of State for European integration expressed in a debate in the Dutch Parliament the importance of the European Commission and its President taking part in the negotiations. In this case it would have to be up to the Council of Ministers to get the Commission to acknowledge both the political and the economic importance of a free trade area. Furthermore, it was stated:

*"Nous estimons que la Commission devra jouer un rôle extrêmement important dans les négociations. Il faudra mettre sur pied une réglementation spéciale pour déterminer le rôle de cet organisme. La Commission Européenne peut contribuer à réaliser l'Accord entre les Six sur le problème de la zone de libre échange."*⁶²⁴

The Commission had been ready to participate in the Free Trade Area negotiations as soon as it was set up. It had also, according to President Hallstein, felt warmly welcomed by the other parties. This had been at a stage when the Commission administration had not yet come into being. It had therefore, "in the absence of an administration of its own [...] set up a small working staff by borrowing qualified experts from the Governments".⁶²⁵

⁶²⁴ French Embassy in the Netherlands. The Hague, 11 February 1958. Reported by Ambassador de Beauverger to the Minister of Foreign Affairs, M. Pineau. EUROPE 1944-1960, COPIE P, Généralités [Questions Internationales], Vol. 193. Archives of the Ministry of Foreign Affairs, Paris. "We consider that the Commission ought to play an extremely important role in the negotiations. Special regulations should be set up to determine the role of this body. The European Commission may contribute in realising an agreement between the Six on the problem of a free trade area." Own translation.

⁶²⁵ Walter Hallstein, Statement to the European Parliamentary Assembly, Strasbourg, 20 March 1958. Archives of the European Commission, Brussels.

Robert Marjolin, Commissioner for economic and financial matters, spoke about the Free Trade Area in a speech in April 1958. He did not, however feel it appropriate to discuss the ongoing OEEC negotiations in Paris in order not to complicate the situation or to come with unsuitable comments. He did, nevertheless, reassure his audience that it was not a wish of the Six to divide Europe. The European Community was more an attempt to unite the continent by taking the lead, he said.⁶²⁶

The Commission itself regarded it as its responsibility to mediate between the various positions of the member States of the Community, as well as between the Six and the OEEC. The primary concern of the Commission, however, was to watch over the general interest of the Community as a whole. It further made it quite clear that it would under no circumstances accept an association which would hinder the development of a more stable organisation, according to the political aspects of the Treaty of Rome. The Commission, therefore, stressed the fact that the Free Trade Area Association had to be set up between the already existing Community of Six and the eleven other member countries of the OEEC, the latter group wishing "to associate themselves with the Community in the pursuit of common aims". To free the negotiations from un-necessary stress and strain, the Commission proposed certain provisional regulations which were explained at the Session of the Assembly in June 1958.⁶²⁷

In June 1958, in a Commission Memorandum sent to the Council of Ministers, it was reported that the governments of the Intergovernmental Conference were "determined to set up a treaty associating the Community with the other non-members in the OEEC on a multilateral basis". They had expressed the wish to *"abolir entre eux, dans toutes la mesure du possible, les obstacles aux*

⁶²⁶ Robert Marjolin to the International Press Institute and the American Society of Newspaper Editors, April 1958. Archives of the European Commission, Brussels.

⁶²⁷ EEC - First General Report 1958, pp. 121-122.

échanges",⁶²⁸ and they also recognised the practical difficulties of concluding such a treaty before 1 January 1959. In another memorandum the European Commission dealt with more practical and institutional problems. One of its main principles was the importance of the Community appearing as one single unit within the Free Trade Area. It had to be an association, not of seventeen States, but of the Community of Six plus of eleven States. As the Commission further pointed out, it had to be this way so long as the reason for the setting-up of the Free Trade Area in the first place was the existence of the Treaty of Rome. Therefore, the message went out both to the other members of the OEEC, as well as to the Six themselves, that matters concerning the Treaty of Rome could not be dealt with by the Six individually in other bodies. Problems concerning the Community, it went on, should be dealt with within the Community, by its own institutions, and not in a structure where third States were made to judge on Community matters. A further principle set out by the Commission was the importance of the Community never to end up in a minority position within the Free Trade Area. Both the political and the economic importance the Community would represent within the Free Trade Area would justify such a position. In case of jeopardizing the realisation of the objectives of the Treaty of Rome, the Commission recommended the Community rather to refuse membership of the Free Trade Area.

"La Commission considère que la Communauté doit attribuer une importance fondamentale au problème des institutions de l'Association économique européenne. Elle a déjà exprimé, dans son premier memorandum, l'avis qu'il faut veiller à ce qu'il ne soit porté aucune atteinte au contenu, au fonctionnement et aux institutions du Traité de Rome.

Elle estime que les six pays ne peuvent accepter qu'une Zone de libre-échange conçue de manière à ne gêner ni la réalisation du Traité de

⁶²⁸ "abolish all possible obstacles to exchange between themselves". Own translation. EEC Commission, Directorate General for External Relations. Brussels, 12 June 1958. 452/58-F, Confidential. Memorandum No. 4 from the Commission to the Council of Ministers. CEAB 5/624.

During the course of the negotiations the concern about discrimination coming from the non-Community members of the OEEC became apparent. As Walter Hallstein pointed out, however, in his statement to the European Parliamentary Assembly in March 1958, "it is indeed true that the consequence of setting-up the Community is that transactions within the Community are treated differently between the Community or its Members and the outside world. There is therefore differentiation. But differentiation is not always discrimination."⁶³⁰ He continued by mentioning the fact that the Community had been made open to other States wishing to join. As Article 237 of the Treaty of Rome stated: "Any European State may apply to become a member of the Community." Such a clear statement, according to Hallstein, could not be seen as anything but as a non-discrimination clause. Hallstein also brought up the point of how "the other eleven member States of OEEC wish to be treated in the same way as the six Member Countries of our Community, but they do not, in return, wish to submit to the same community rules".⁶³¹ Furthermore, he stressed the importance of organising the external relations of the Community in such a way as would satisfy its partners, in particular those of the proposed Free Trade Area. Not, as he pointed out, "because we have a guilty conscience, or that we are seeking to remedy an injustice we have brought about by setting-up the Community, but purely for the sake of European progress". The setting up of the Common Market, it had to be remembered, had been the main

⁶²⁹ "The Commission considers that the Community ought to ascribe a fundamental importance to the institutional problem of the European Economic Association. The Commission has already expressed, in its first memorandum, its advise not to make any changes to contents, functioning or institutions of the Treaty of Rome. The Commission would estimate that the six countries could not accept a free trade area to be set up in a way that would interfere with the coming into effect of the Treaty of Rome, or its institutional setting." Own translation. EEC Commission, Memorandum No. 3. Brussels, 13 June 1958. 456/58-F, Confidential. CEAB 5/624.

⁶³⁰ Assemblée Parlementaire Européenne. Débats. Session de mars 1958.

⁶³¹ Bulletin of the European Economic Community, No 1, Brussels, February 1959, p. 8

reason for talks on the Free Trade Area in the first place.⁶³² It was, furthermore, fully justifiable according to Article 8 of the OEEC Code of Liberalisation that "[T]wo or more Member countries forming part of a special customs union [...] without extending them to the other Member countries".

The Commission, as well as the other institutions and the member State Governments of the EEC were concerned that the provisions of the Treaty of Rome should not end up in jeopardy within an association of seventeen States. As the European Parliamentary Assembly declared on 27 June 1958: "While it is ready to approve the conclusion of an economic association with the other European states, it will not agree to the merging of the Communities in a larger whole in which they, as well as the associated countries and territories, would lose the benefits of the economic and political integration now being undertaken."⁶³³ The same resolution stressed the point of the Community being represented as one entity in the Free Trade Area, as well as agreed to the Commission proposal of setting-up transitional regulations due to the impossibility of setting-up the Free Trade Area from 1 January 1959. These regulations should, however, be accompanied by a declaration of intention to conclude the treaty instituting the Association.⁶³⁴ One way of reading this resolution would be to say that it shows a more careful, if not pessimistic attitude in the Commission, in line with that of the French Government at the time.

⁶³² Walter Hallstein, Statement to the European Parliamentary Assembly, Strasbourg, 20 March 1958. Archives of the European Commission, Brussels.

⁶³³ EEC - First General Report 1958, pp. 113-114. The original quote from the "*Proposition de Résolution sur un traité d'Association économique européenne*" of the Assemblée Parlementaire Européenne, 27 June 1958 says: "*L'Assemblée Parlementaire Européenne, Déclare que elle est prêt à approuver la conclusion avec les autres partenaires européens d'une association économique, elle ne pourrait accepter de voir se dissoudre ces Communautés dans un ensemble qui leur ferait perdre ainsi qu'aux pays et territoires d'Outre-mer associés, les bénéfices de l'intégration économique et politique actuellement entreprise.*"

⁶³⁴ Déclaration faite par M. Walter Hallstein, président de la Commission de la Communauté Economique Européenne devant l'Assemblée Parlementaire Européenne à Strasbourg, 21 octobre 1958. Archives of the European Commission, Brussels.

After the conference on the Free Trade Area in July 1958, the Commission proposed the setting-up of provisional regulations for lowering of customs duties between the countries taking part in the negotiations. This way the negotiations could continue without there being too much difference between the treatment reserved for the member States of the Community and the treatment reserved for non-Community members.⁶³⁵

In September 1958, when the European Commission was well established and had entered the negotiations for a free trade area, it produced a Memorandum to the Council of Ministers concerning institutions of the future Free Trade Area. This was the first time the EEC had taken any position concerning the institutional problem. To the Community it was important that decisions taken under the Treaty of Rome should not be contested or paralysed in any way by the Free Trade Area Association. Furthermore, the Community would have to occupy a position which would correspond to its real weight in the system, and never as a minority. Moreover, it had to be settled whether it was the Community of Six that entered the Free Trade Area as one unit, or the member States individually. The Commission took the position that, as any matter covered by the Treaty of Rome had to be treated by the Six as a community, the Six therefore ought to enter the Free Trade Area as a single unit. This would also be to prevent the Six from disagreeing in the Council of Association, something which would weaken the position of the Community. Already in June 1958 the Commission had produced a confidential memorandum to the Council of Ministers concerning the institutional setting of the Free Trade Area. The Commission had adopted the view that its institutions ought to be of an OEEC type, and not reflecting the structure of the Treaty of Rome. In concrete terms, it advised the setting-up of a Council for the Free Trade Area, with twelve members. There should be one member representing the Community of Six, and one each for the eleven other member States. Furthermore, the Commission recommended this

⁶³⁵ Walter Hallstein to the European Parliamentary Assembly, Strasbourg, 21 October 1958. Archives of the European Commission, Brussels.

Council to operate on the basis of a unanimity rule.⁶³⁶

Within the structure of the Free Trade Area the Commission had also set up certain guidelines for its own role. Firstly, in matters where the Commission had been given decision-making powers by the Treaty of Rome, it would regard as its duty to determine the position of the Community as a whole. Secondly, in all other matters, the Commission would send proposals to the Council of Ministers which would serve as a basis for the Community position in the Free Trade Area. Lastly, the Commission suggested it should be given the task of spokesman for the Community in the Free Trade Area Council.⁶³⁷

In October 1958, Jean Monnet's Action Committee for the United States of Europe issued a Joint Declaration stating the urgency "to arrange for the Commission to negotiate in the name of the Six for the association of Great Britain and the other European countries with the Common Market".⁶³⁸ The Joint Declaration further pointed out the fact that the Commission was the symbol of the unity of the Common Market and would therefore be the obvious representative of the Community as a whole. It continued by saying that "it would be possible to reach agreement if the Commission were empowered to define, with Great Britain and the other States, those solutions which are acceptable on the one hand to the Community, and on the other to the countries which are to be associated with the Community".⁶³⁹ This view was also shared by the Commission itself, which would have liked to play a more prominent role in the negotiations. It had by this time already taken an active and initiating position in the negotiations, but still only secondary to the national

⁶³⁶ EEC Commission, Brussels, 5 September 1958. COM(58)178 rev. Memorandum from the EEC Commission to the Council with regard to the conference in Venice, 18-20 September 1958. CEAB 5/617.

⁶³⁷ EEC Commission Memorandum No. 3, Brussels, 13 June 1958. 456/58-F, Confidential. CEAB 5/624.

⁶³⁸ Camps (1964) p. 148n.

⁶³⁹ Joint Declaration, Action Committee for the United States of Europe, 16-17 October 1958. Fifth Session, Paris. Action Committee for the United States of Europe. Statements and Declarations 1955-67, p. 30-31.

Governments.

4.3 The Second Phase of the Negotiations

On 26 November 1958, the first meeting between Chancellor Adenauer and President de Gaulle took place at Bad Kreuznach in Germany. During this meeting it was agreed between the two Heads of State not to reopen the Free Trade Area negotiations within the OEEC. However, they would ask the President of the Commission "to elaborate a plan for a 'multilateral association' between the Community and the other OEEC countries".⁶⁴⁰ Agreement was also reached on the measures that the Six might take to mitigate but not to eliminate the difference in tariffs and quotas between the Six and the other OEEC countries that would arise from 1 January 1959.

Inspired by the Bad Kreuznach meeting the Council of Ministers meeting on 3 December 1958 made clear its desire "to continue the efforts to establish a multilateral association between the European Economic Community and the other states of the Organisation for European Economic Co-operation". The next day, on 4 December, Mr. Erhard met in London with Prime Minister Macmillan and several of his ministers to explain the decisions taken by the Council of Ministers. Due to the political situations of the other eleven OEEC countries, there could be no meeting before Christmas. Maudling, on the other hand, was charged with producing a report by 1 January 1959 on the state of the negotiations.⁶⁴¹ This was where what we have referred to as the second phase of the Free Trade Area negotiations was launched. The Commission was in this connection to make "a detailed examination of the problems and of the possibilities of resolving them" in a report before 1 March 1959. The other OEEC countries, however, would from then on only be

⁶⁴⁰ Camps (1964) p. 176.

⁶⁴¹ EEC Council, Brussels, 9 December 1958. From Mr. Erhard to the governments of the member States of the EEC after his visit to London on 4 December 1958. R/140 f/58-ams. CEAB 5/617.

informed, with no power to negotiate or bargain.⁶⁴² On the very same day Adenauer told Macmillan that "[I] personally tend to the view that the European Common Market Commission could make an even more useful contribution than they have done in the past. I would in any case do all in my power to assist them, in order to further the successful outcome of the negotiations".⁶⁴³ On 15 December 1958 the Council of Ministers of the OEEC met in order to find a way of associating the rest of the OEEC with the Six. No proposal was put forward in the end. From this point onwards the main discussions took place outside the OEEC. At official level, nevertheless, the OEEC continued to discuss the quota problem.⁶⁴⁴

The de Gaulle Government, formally and constitutionally in power at the time, presented itself as being against the Free Trade Area plan. Together with the Commission, it was also opposed to the early resumption of negotiations on any long-term plan. As a consequence, the resulting Memorandum produced by the Commission in February 1959 proposed a course of action to moderate the effects of the failure to reach a European-wide agreement. This came instead of a suggestion as to how negotiations for the Free Trade Area could have been resumed.

In line with the Spaak Report, the Commission concluded that there were only two entirely satisfactory systems of multilateral free trade: "the customs union (or, more exactly, the economic union) which secures for all participants the same conditions of supply, and world free trade, which ensures this same equality". According to the Commission, a free trade area would be acceptable "only to the extent that it is fitting into a setting of increasing liberalisation of world trade and abandons any idea of strengthening European economic solidarity in the strict sense of the word, or approximates to the type of the customs union".⁶⁴⁵ As President

⁶⁴² Camps (1964) pp. 184, 176-77.

⁶⁴³ Message from Adenauer to Macmillan, 3 November 1958. Macmillan (1971) p. 455.

⁶⁴⁴ Camps (1964) p. 182.

⁶⁴⁵ First memorandum from the Commission of the European Economic Community to the Council of Ministers of the Community, 26 February 1959. The

Hallstein told the European Parliamentary Assembly on 13 January 1959, the Community needed a common policy of external trade to prevent the breaking out of internal competition between the Six. The Free Trade Area would not have a common external tariff, nor a common trade policy, which were exactly why the Six had set up the Community. Although the Commission in principle was favourable to the setting-up of the Free Trade Area, President Hallstein pointed out the difficulties of, not only uniting the eleven countries of the OEEC with the Six, but also of the total number of seventeen states with different economies getting together. Such a remark certainly carried considerable weight knowing the difficulties of the Six to arrive at a common position among themselves only. The Commissioner for external relations, Jean Rey, had been put in charge of this task and the Commission expected more dealings with the national governments in the future.

Among the other speakers at the European Parliamentary Assembly Session of 13 January 1959, there was a general feeling in favour of the Free Trade Area. On the other hand, there was an equally common feeling of making sure the Community would not be put in jeopardy. As it was still very much under development it would be important to follow what had already been set out in the Treaty. The fact that the Community which had been set up by the Six involved common policies in addition to its common trade was further seen as an important element of difference between this and a free trade area. In the event of the Free Trade Area becoming a reality, the Dutch member of the Parliamentary Assembly, Mr. Blaisse, expressed a desire to see the Commission as the central body of the Free Trade Area, functioning more as the association 'spokesman' through an extension of its mandate. It was the unity of the Community which was characteristically expressed as coming before anything else. A second concern was

Spaak Report stated that *"il existe entre les pays du continent des raisons économiques et techniques décisives de choisir la formule de l'union douanière, elles n'excluent pas la possibilité d'y superposer une zone de libre échange avec tel autre pays..."*. "there exist between the countries on the continent economic and technological reasons decisive to the choice of a customs union, but these do not exclude the possibility of a free trade area with other countries to be superimposed..." Own translation. "Rapport des Chefs de Délégation aux Ministres des Affaires Etrangères", Bruxelles, 21 Avril 1956, p. 22.

that the Community should not be seen, or act in a protectionist, "closed" and "dirigist" way towards the rest of Western Europe. As Hallstein had expressed, and Mr. Birkelbach of Germany agreed to, the Community could not throw itself into any adventure before other more complex problems had been taken care of.

The German Minister of Economic Affairs, Ludwig Erhard, expressed during the same session his wish for the Community and the OEEC countries to give each other equal access to the two markets, despite political aspects in the Community. This, he declared, was more important than creating institutions. As expressed by Jean Rey there was not so much a choice between two different policies, but rather a continuing of the realisation of policies set out in the Treaty of Rome and, at the same time, the pursuing of a liberal cooperation with the Community neighbours. The result of this full-day session of the European Parliamentary Assembly on 13 January 1959 was the unanimous adoption of the following resolution declaring: *"L'Assemblée Parlementaire Européenne approuve les déclarations du Président Hallstein concernant la création d'une association économique européenne."*⁶⁴⁶

Until 1958 the German Government was to have a divided line on European integration policies, a result mainly due to the differences between Chancellor Adenauer and his Minister of Economics, Ludwig Erhard. The year 1958, however, was to see a number of changes, some of which lessened these divisions. At this stage the Treaties of Rome were already signed and the two European Communities set up. Furthermore, the Free Trade Area negotiations within the framework of the Maudling Committee had failed to reach a solution. The latter was a result of the Bad Kreuznach meeting between Adenauer and de Gaulle in November 1958. This meant, in other words, that the hopes of setting-up a European Free Trade Area, strongly advocated by Erhard, were more faint. The next step would be to see the Common Market operate in the best way possible. Within Germany there had also occurred a certain number of changes in relation to its focus on European

⁶⁴⁶ "The European Parliamentary Assembly approves the declarations of President Hallstein concerning the creation of a European economic association." Own translation.

integration. The 1958 agreement saw a solution to the problem of administrative competencies concerning the European institutions. The Ministry of Economics was secured a greater influence through its representation in the Council of Ministers, jointly with the Ministry of Foreign Affairs. The Ministry of Economics was, moreover, "put in overall charge of preparing the Federal Government's position and took responsibility for interdepartmental coordination".⁶⁴⁷ The Ministry of Foreign Affairs, on the other hand, was "entrusted with 'day-to-day' European policy".⁶⁴⁸

The situation in Germany was, as has been shown, very different from that of France which, at this stage, saw no opposition to the Treaty of Rome and the Common Market. Furthermore, Germany had agreed to the many derogations demanded by France in order to take part in the Common Market, due to its weak economy of the time. This had been one of the difficult points to overcome in Germany, but essential for France to take part. As put by Hanns Jürgen Küsters: "The considerable finance concession, ADENAUER agreed to at the conference of heads of government on February 20th [1957] in Paris, was the price for the French joining the market".⁶⁴⁹ Another consideration of great importance to Germany was to regain the trust of the Western powers to lift discrimination and make her an equal partner. For this to happen she had to accept to give concessions to the French.⁶⁵⁰ Nevertheless, there were certain feelings within the industries that "[I]f it is a question of rich and poor [...] then the Federal Republic ought to be on the receiving end".⁶⁵¹

The High Authority, which had in December 1954 signed an Agreement of Association with the United Kingdom, made some attempts of becoming involved in the Free Trade Area negotiations. As early as in November 1956 at a meeting

⁶⁴⁷ Yearbook of European Administrative History 1992, p. 191.

⁶⁴⁸ Bulmer and Paterson (1987) p. 31.

⁶⁴⁹ Enrico Serra (1989) p. 504. Capital letters in original.

⁶⁵⁰ Bulmer and Paterson (1987) p. 125.

⁶⁵¹ Deutsche Zeitung, 2 March 1957. In: Willis (1965) p. 270.

between the High Authority and the United Kingdom, the former intended to put on the agenda the creation of a free trade area and problems related to it. It was, at this point, thought there was a certain desire to cooperate detected among the British. Nevertheless, the United Kingdom wanted to postpone this meeting, scheduled for 16 November 1956, until January 1957. The reason was the fact that the United Kingdom was then taking part in discussions within the OEEC touching the issue of British tariffs, only now with regard to the whole of the Western Europe.⁶⁵² The High Authority was highly interested in the Free Trade Area negotiations for two reasons in particular. One was the very existence of the High Authority itself, which somehow saw itself as dependent on the developments of the future. The other was the Association Treaty between the United Kingdom and the ECSC, which would surely have to suffer with the United Kingdom as a member of a free trade area together with other OEEC countries.

4.4 "The Ockrent Report" and the Commission Memoranda

Before the European Commission had come to take an active and initiating part in the Free Trade Area negotiations, negotiations on behalf of the Six had been conducted by representatives of the national governments, as well as by the High Authority of the ECSC on the basis of a mandate from the Council of Ministers. The Commission, when it had come to operate, was merely to assist the national governments in the negotiations. According to the Permanent Representatives in January 1958, participation by the Commission "would be pragmatic and would be developed empirically".⁶⁵³

By June 1958 the Commission had been set up and started operating with most of its staff present. It was therefore felt appropriate to take a more active part in the negotiations. Its own role it defined this way:

"The European Commission deems that its duty is to achieve a compromise between the divergent positions which emerges

⁶⁵² Spierenburg and Poidevin (1994) p. 354.

⁶⁵³ Lindberg (1963) p. 144.

manifesting themselves not only between the Member States but also between these States and the eleven other states of the OEEC. The Commission will be guided by its first duty, which is to watch over the general interest of the Community as a whole. [...] it must advocate a form of association which will not impede the realization of the Community and the execution of its essential tasks. In order to achieve this, the Commission believes it will have to play an increasingly large role in the negotiations."⁶⁵⁴

The Memorandum from the EEC, named after Roger Ockrent, the Belgian permanent delegate to the OEEC, was not a coherent plan of association but a collection of the conditions which the Six felt any association arrangement must meet.⁶⁵⁵ Nevertheless, it was the most comprehensive exposition of a collective "Community" point of view made during the negotiations, something which possibly could be seen as quite late. It argued for substantive arrangements as similar as possible and, at the same time, for very dissimilar institutional and procedural arrangements. As the Report set out, the Community was determined "both for economic and political reasons, to arrive at an agreement which will make it possible to associate with the Community on a multilateral basis the other Member States of the OEEC".⁶⁵⁶ Further, the Report stressed a point which was frequently made at the time, that an association with the other OEEC countries should not in any way prejudice the Treaty of Rome. To the European Parliamentary Assembly on 13 January 1959 the Commission President, Walter Hallstein, expressed how the Commission had been very pleased with the Report and had used it as a guide. However, his main question was: "*Pourquoi n'a-t-on pas pu aller plus loin?*".⁶⁵⁷

1 January 1959 marked the date of the first cuts in tariffs and increases in quotas as set out by the Treaty of Rome. The European Commission was hence distracted from any further discussions about a free trade area for much of the first

⁶⁵⁴ EEC - First General Report 1958 p. 116.

⁶⁵⁵ OEEC, Paris, 20 October 1958, "Inter-Governmental Committee on the establishment of a European Free Trade Area". Cmnd. 641, pp. 96-103.

⁶⁵⁶ Camps (1964) p. 158.

⁶⁵⁷ "Why have we not been able to get any further?" Own translation.

half of 1959 to deal with something which seemed more important and pressing. During the second half of 1959 there was a desire by so-called "Europeans" to speed up the development to make the Common Market truly irreversible. This was also supported and encouraged by the French industry, which had been opposed to the Treaty of Rome from the start.

On 14 January 1959 the Council of Ministers held a meeting assessing the current situation after the breakdown of the Free Trade Area negotiations and with the coming into effect of the provisions of the Treaty of Rome. There was expressed a shared wish for the Community to enter into bilateral negotiations with the other OEEC countries. The Free Trade Area negotiations were fairly high on the agenda of the Council of Ministers during this period. Between December 1958 and February 1959 two of its four meetings were devoted solely to problems of free trade and the European Economic Association. It might seem like the Council of Ministers were working in favour of the Free Trade Area, despite France, and its Minister of Foreign Affairs M. Couve de Murville, holding the Presidency from 1 January 1959.

The First Memorandum from the European Commission was a study instructed by the Council of Ministers on 3 December 1958, and had to be published by 1 March 1959. However, when it was submitted to the Council on 27 February 1959⁶⁵⁸ the Memorandum was not entirely positively received throughout the Community. The French Government of de Gaulle was the only one which had openly opposed the Free Trade Area and therefore the most in line with the European Commission. The Benelux countries and Germany, on the other hand, were more critical towards the First Memorandum. One reason for their criticism was the fact that the Commission had come up with no suggestions of how to resume the Free Trade Area negotiations, which was its original mandate given by the Council of Ministers. To the French, the views of the Commission on trade had seemed too liberal and the Benelux countries were hoping for a trade arrangement which would include the OEEC countries. When the Commission's First

⁶⁵⁸ Bulletin of the European Economic Community No. 2, 1959, p. 21.

Memorandum was discussed in the Council of Ministers in March 1959, almost all the governments were favourable towards the establishment of a European Free Trade Area. Only the French backed the Commission in its desire not to resume the negotiations. The French were at this point interested in the setting-up of the Common Market and wanted to give that first priority.

As a sign of the member States' general dissatisfaction with the First Memorandum of the Commission, representatives of the national governments were to work with the Commission in a Special Committee. With Jean Rey as the Chairman, this Committee, whose real name was the "Special Committee for the Study of European Economic Association", came to be known as the Rey Committee. The Committee was set up at the 20th session of the Council of Ministers on 15 March 1959. It met for the first time on 30 April 1959 to discuss the First Memorandum of the European Commission. Apart from Jean Rey as its Chairman, its members were Robert Marjolin, Giuseppe Petrilli and Hans von der Groeben from the European Commission, Baron Snoy et d'Oppuers from Belgium, Olivier Wormser from France, Alfred Müller-Armack from Germany, Ernst van der Beugel from the Netherlands, and Attilio Cattani and Albert Borschette representing Italy and Luxembourg, respectively. The latter two served also as their countries' Permanent Representatives to the European Communities.⁶⁵⁹ Such a composition of this Special Committee must in many ways be seen as a step backwards from the original suggestion by the Council of Ministers that the Commission should be given a larger role in the negotiations, a point which had been urged by Jean Monnet and other strong "Europeans".

To the supporters of a wider European trade arrangement, the First Memorandum of the European Commission was felt as negative and inadequate as it did not contain any suggestions or signs for the Free Trade Area negotiations to reopen. This was a feeling which was also representative of the Council of Ministers, although not shared by France. The Commission, Jean Monnet and the

⁶⁵⁹ EEC Commission, Bulletin No. 2 (1959), pp. 21-22.

French Government all made it clear to the Americans that they disliked the OEEC as a forum for the discussions of European trade questions. It was feared that almost any discussion on trade in that forum would soon be turned into a new round of multilateral negotiations on something very similar to the old free trade area plan. During meetings of the Rey Committee in April and May 1959 the position of France towards a free trade area hardened more and more. It was for the first time that the French openly questioned the "objective of ever seeking any form of wider European association".⁶⁶⁰

Although the Free Trade Area negotiations had ended several months earlier, there were still efforts to resume these during the spring of 1959. Jean Monnet, however, was of the opinion that the Commission had adopted too negative an attitude. Therefore, his Action Committee for a United States of Europe proposed in May 1959 "that the Common Market Commission and the British Government should meet in a round-table conference to define the bases of a multilateral negotiation on the European Economic Association".⁶⁶¹ Later that year the emphasis, both of the Commission and of Jean Monnet, had shifted towards a more global solution to the problems of European trade. In a Joint Declaration from the Seventh Session of the Action Committee for a United States of Europe on 19-20 November 1959 it pointed out that it "does not consider it necessary to revert to the difference between the Common Market, which is the embryo of a United Europe, and a commercial Free Trade Area. It [the Action Committee] believes that every effort should be made to find the closest possible form of relationship between the Common Market, the Seven, and other parts of the world." It further continued, saying that "[W]hat is at stake is no longer simply the question of how trade problems should be settled between the Six and the Seven, or of how a European economic association may be established, but rather of how to solve the economic

⁶⁶⁰ Camps (1960) pp. 15-17.

⁶⁶¹ The sixth session on 11 May of the Action Committee for a United States of Europe. *Action Committee for the United States of Europe. Statements and Declarations 1955-67*. PEP Chatham House. European Series No. 9, March 1969, p. 36.

problems facing all the countries of the West - including the United States".⁶⁶² Within the Rey Committee, however, the Benelux and German representatives pressed for the negotiations to be renewed, being committed to the ultimate goal of an OEEC-wide free trade arrangement. The French, on the other hand, adopted the line of the European Commission of opposing the renewal of the negotiations.

As the above mentioned quotes by Jean Monnet's Action Committee make clear, we are now talking about seven members of the OEEC as opposed to the earlier eleven. The group of Seven became apparent around the end of 1958 and the beginning of 1959. It had started out as what Miriam Camps referred to as "the Other Six", meaning the United Kingdom, Austria, Switzerland and the three Scandinavian countries, Denmark, Norway and Sweden. Portugal, however, expressed a wish to take part in this group as well. Iceland, Ireland, Greece and Turkey were the remaining of the earlier eleven countries. They were less developed and therefore not interested in the plans of the Seven.

The First Memorandum of the Commission had been requested by the Council as a means to find "the joint position that could be taken up by the Member States".⁶⁶³ Voices within the Community ended up quite disappointed with the Commission as it did not suggest or define the ways for which negotiations could have been reopened. In the First Memorandum the Commission had published the view that external relations of the Community, including relations with other European countries, would be easier to deal with once the Community was more firmly based.

It was to be the French that were causing the problems also in the Rey Committee. At its meetings of April and May 1959, the French representative began openly questioning the very need for any sort of wider European association. As

⁶⁶² Joint Declaration 19-20 November 1959, Seventh Session, Paris. *Action Committee for the United States of Europe. Statements and Declarations 1955-67*, p. 42.

⁶⁶³ Camps (1960) p. 12.

Miriam Camps has put it "the differences of view among the Six no longer revolved around the nature of the wider association or the timing of the negotiations, but centred on the fundamental question of whether or not a tariff-free area of the OEEC countries was a desirable objective".⁶⁶⁴

The UK Government regarded it as quite clear that the negotiations should have as their goal the establishment of a multilateral association of seventeen States which would include the Common Market. This situation, as they saw it, would not break this up but rather permit the Six to collect the advantages of their Treaty, which were advantages that could not have been obtained in a divided Europe.⁶⁶⁵ While negotiating for the United Kingdom during the Free Trade Area negotiations, Mr. Maudling had frequently chosen not to take into account the views of the Commission, and in particular President Hallstein. Some years later, however, during the negotiations for British accession to the European Community, the then Prime Minister, Mr. Edward Heath enjoyed much more cordial relations with the Commission. By then the Commission also played a much more important role in the negotiations than it had in the Free Trade Area negotiations.⁶⁶⁶ During the negotiations of the Maudling Committee, on the other hand, it seems to have been a fairly common feeling that "direct negotiations between the United Kingdom and the Six offered the best chance of finding an acceptable arrangement",⁶⁶⁷ something which would rule out the direct involvement of the European Commission.

In September 1959, the Second Memorandum of the Commission was published. It was originally sent as a memorandum to the Rey Committee, but after its main outline had been given to the European Parliamentary Assembly on 24 September, the Memorandum was released to the press. This Memorandum went even further than the first in denying the need for a "European" solution of a free

⁶⁶⁴ Camps (1964) p. 189.

⁶⁶⁵ EEC, Council, Brussels, 19 February 1959. 81/59. Note d'Information. Maudling to the House of Commons. BAC 24/1967, No. 124.

⁶⁶⁶ Camps (1964) p. 374*n*.

⁶⁶⁷ Camps (1964) p. 196.

trade area. It was felt that priority had to be given to the process of making the Community irreversible, something the Commission felt the Free Trade Area negotiations were hindering, as well as stressing its role world wide. Due to its recent experiences, the Commission pointed out how a free trade area solution could only be an option as long as the latter would be understood as "an element of a progressive economic policy of the Community vis-à-vis the external world".⁶⁶⁸ It was regarded, from the Commission's point of view, as important for the Community, as well as the rest of Europe, to adopt more liberal trade policies, rather than continuing the search for a "European" solution. This was also something which was actively supported by the Americans. The German and Benelux Governments, on the other hand, were not very happy with the Second Memorandum, feeling there should have been a "renewed commitment to the ultimate objective of an OEEC-wide free trade arrangement". This was something the Commission as well as the French strongly opposed. The French, at this stage, opposed any OEEC solution which it thought was too influenced and controlled by the British.⁶⁶⁹

The Commission quite clearly had turned away from the Free Trade Area as the primary solution to trade and to its relations with the other European countries and the rest of the world. It would have been only one sort of association possible to a problem which, according to the Second Memorandum, could not be regulated and decided on without more time and experience. The Commission, therefore, felt the need to attempt a more pragmatic method where not only the rest of Europe, but the rest of the world as well, would be important partners of trade. Contacts with the USA and with developing countries were also put high on the list. The USA pointed out that, although it had tolerated discrimination from European countries as a means of reconstruction after the Second World War, it was high time it was treated as an

⁶⁶⁸ Second Memorandum of the Commission to the Special Committee, Bulletin de la Communauté Economique Européenne, No. 4, 1959, p. 13. *"un élément d'une politique économique progressive de la Communauté vis-à-vis du monde extérieur"*. Own translation.

⁶⁶⁹ Camps (1960) p. 22.

equal partner. The Second Memorandum was not regarded as the final solution to the problem of trade in Europe or the world, but more as suggestions and the proof of the "good will of the Community".⁶⁷⁰ However, it was a fact that there had occurred a shift towards a world wide liberal policy, as well as more stress on the internal integration of the Community.

After the failure, in November-December 1958, of setting-up the Free Trade Area between the Six and their partners in the OEEC, the governments of the latter seven countries - Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom - began to explore the idea of a separate free trade arrangement between themselves. The first meeting was held in Oslo in February 1959. Towards the end of the year, on 20 November 1959, the Convention establishing the European Free Trade Association (EFTA) was initialled at a Ministerial meeting in Stockholm. After the Convention was signed on 4 January 1960, EFTA came into force on 3 May of that year, after having been ratified in all seven parliaments.⁶⁷¹

EFTA, as opposed to the EEC, was not set up as a customs union, but rather as an association where the member States were contracted to remove obstacles to trade among themselves. The institutions of this association were not set up to have supranational powers, and decisions were to be taken unanimously at ministerial or delegation level. Among "Europeans" within the Six, EFTA was seen as a set-back to the European integration process, although the Free Trade Area had not been a plan for a strict sense of integration, having involved no sharing of sovereignty nor any higher authority. Nevertheless, it would have assumed an economic integration of the whole of the Western Europe. Instead, Western Europe became divided into two different trading associations.⁶⁷²

⁶⁷⁰ Memorandum de la Commission au Comité Special, Bulletin de la Communauté Economique Européenne, No. 4, 1959, p. 16. *"la bonne volonté de la Communauté"*. Own translation.

⁶⁷¹ The European Free Trade Association (1987) *EFTA*, Geneva.

⁶⁷² Graduate Institute of International Studies (1968) *The European Free Trade Association and the Crisis of European Integration* (Geneva: Michael Joseph Ltd.).

The breakdown of the Free Trade Area negotiations resulted in various and different reactions among the actors concerned, as well as from the Americans. The strongest reactions in a negative sense came from the Dutch and, although to a lesser degree, from Belgium and Germany. The Italians, on the other hand, tended to go along more with the French. Apart from being favourable towards a looser free trade arrangement with the OEEC countries, the Dutch were also quite concerned about the Franco-German dominance becoming too strong.

5. CONCLUSION

The European Commission had been set up with the Treaty of Rome coming into force on 1 January 1958. Its administration was largely established by the end of March of that year, and one of the first tasks on the agenda was the Free Trade Area negotiations between the Six and the remaining countries of the OEEC. The Commission had hardly been able to define its structures and working procedures before it had to conduct negotiations with third States on behalf of the Community. President Hallstein and Jean Rey, the European Commissioner for external relations, were its two main protagonists, setting out the role of the Commission at an early stage. Already on 20 March 1958 Hallstein spoke to the European Parliamentary Assembly where he defined the Commission's position in the Free Trade Area negotiations. He put great emphasis on the fact that "[I]t was only the introduction of a Common Market that inspired the campaign for a Free Trade Area." Nevertheless, a positive position was taken by the Commission towards the Free Trade Area at this stage. Later on the same year, on 21 October 1958, he spoke again to the same Assembly. This time stating that, as the Commission was compelled by the Treaty of Rome to conduct liberal relations with the external world, this was why the Commission took such a constructive approach to the negotiations and the setting-up of the Free Trade Area.

As we have stated above, the Free Trade Area negotiations had begun before the European Commission was set up. Therefore, by the time the Commission was

in operation, ministers and officials of the Six Governments were too much involved to want to transfer any considerable responsibility to the Commission. Jean Monnet, on the other hand, argued for there to be a change in the negotiations to be conducted by the Commission on one side, and the United Kingdom and the other states on the other. A Joint Declaration published by Monnet's Action Committee for the United States of Europe, urged "the Commission to negotiate in the name of the Six for the association of Great Britain and the other European countries with the Common Market".⁶⁷³ If the Commission had become the chief negotiator of the European Communities it would most likely have strengthened its position as an independent institution. Furthermore, and possibly even more importantly, it would have shifted the French problem over to become a Community problem. To have one negotiator instead of six from the European Communities could also have solved the problem of too many delegations.

In the view of the first Executive Secretary of the European Commission, Emile Noël, the Commission had, during 1958, a rather limited weight in the Free Trade Area negotiations. It had, through Jean Rey, obtained to get involved in the Maudling Committee at a ministerial level, and had attempted to define a common position of the Six and the Commission. As even some of the governments had a divided position, this was a rather difficult task, especially, as we have seen, in the case of Germany. Emile Noël, on the other hand, pointed out the fact that the Commission did play a role of political content towards the end of the negotiations, although it did its best not to use the powers given to it through Articles 112-114 of the Treaty of Rome.⁶⁷⁴

⁶⁷³ Joint Declaration, Action Committee for the United States of Europe, Paris, 16, 17 October 1958. In: Camps (1964) p. 148.

⁶⁷⁴ Article 112: "harmonization" of aids granted by Member States for exports to third countries. Article 113: general guidelines for the Community's "commercial" (foreign trade) policy after the expiry of the transitional period. Article 114: confers the authority to conclude agreements on behalf of the Community on the Council. The latter article must be read in light of Article 228 about international agreements. In: Hans Smit and Peter E. Herzog (July 1982) *The Law of the European Economic Community. A Commentary on the EEC Treaty* (Columbia Law School, Project on European Legal Institutions). Views expressed

Leon Lindberg, in his early analysis, divided the process of free trade into three different stages. The first one would last from July 1956, when the British first proposed a European Free Trade Area, until November 1958 when the French broke off the discussions. This period was characterised by negotiations on a multilateral level, within the framework of the OEEC, where the Maudling Committee was one of the main actors. The second stage, which is the most interesting one from a Commission point of view, lasted from November 1958 until January 1960. During this period the Commission was invited to take over the task of trying to reach a solution between the Community of Six and the other OEEC countries. It saw the acceleration of the Treaty of Rome timetable and, with the failure of the Free Trade Area, the creation of EFTA. The third and last stage, as Lindberg defined it, lasted until the end of 1960 which saw the end to the idea of a free trade area between the Community of Six and the other OEEC countries altogether. During the second stage, however, as the Commission stepped into the Free Trade Area negotiations, it gradually expanded its role, and "offered its own compromise which [...] was ultimately accepted as the Community doctrine".⁶⁷⁵

In Walter Hallstein's view, the reasons for the failure of the Free Trade Area negotiations were several. One was a fear of "discrimination", coming from the United Kingdom in particular. Among the Six there was a fear that the Community might have dissolved and ceased to be what was then a potentially political entity, turning into a mere commercial arrangement more like the proposed Free Trade Area itself. He further claimed that the Free Trade Area would have "constituted an even greater area of 'discrimination' without the political guarantees and advantages of the European Community".⁶⁷⁶ Jean Rey pointed out the problem for the Common Market to join, or set up, the Free Trade Area, being such a new and developing organisation itself. The Community had not yet set in operation its common external tariff, nor had its commercial policy become Community-wide. In

by Emile Noël in a conversation in Paris on 12 December 1994.

⁶⁷⁵ Lindberg (1963) p. 117.

⁶⁷⁶ Hallstein (1962) pp. 72-73.

Rey's words there was a certain "anxiety [that] the Treaty of Rome enterprise could be dissolved quickly into a bigger organisation at a time when the Common Market has not yet established a personality of its own."⁶⁷⁷ This was a fear not only coming from within the Commission, however. As Miriam Camps expressed it, there was a fear on the part of the "Europeans", particularly after the ratification of the Treaty of Rome, that a broader, looser arrangement would replace a tighter, more far-reaching plan set out for the Community. This in the end contributed to the failure of the Free Trade Area negotiations.⁶⁷⁸

In the view of Reginald Maudling, a view which also reflected the British attitude at the time, the breakdown of the negotiations was due not to difficulties in certain areas, but to the lack of willingness from certain parties. In this case the party referred to was France. Maudling further found the Common Market to be discriminating on behalf of the Six, something which was against the principles of the OEEC.⁶⁷⁹

Had the British Government taken the lead in the attempts to create a strong and unified Europe, she could have played the determining role in shaping the new Europe. She could have been there to define its scope, in setting its institutional pattern and in defining its ideals. A leadership of Europe was there for the United Kingdom, if she had wanted it, during the 1950s. The British, on the one hand, were preoccupied with other urgent problems, such as the Suez Crisis, and on the other, underestimated the revival power of continental Europe and misjudged the strength of the post-war drive towards unity. As a consequence, the British missed the chance to create the kind of Europe they later wanted. The result was that the concepts of the Treaty of Paris and the Treaties of Rome, and the elaboration of a Community doctrine, have been dominated by the work of Frenchmen such as Jean Monnet, Robert Marjolin, Pierre Uri, Maurice Faure, and others. The Belgian Paul-Henri

⁶⁷⁷ EEC Commission, Bulletin No. 4 (1959), p. 6.

⁶⁷⁸ Camps (1964) p. 102.

⁶⁷⁹ EEC, Council, Brussels, 19 February 1959, 81/59. Note d'Information. Maudling to the House of Commons. BAC 24/1967, No. 124.

Spaak, Walter Hallstein from Germany, and Sicco Mansholt from the Netherlands have also played important roles, but it has nevertheless been the French who have been the innovators, as well as given a formal, logical content to the construction of the early European Communities.

Despite the failure of the Free Trade Area negotiations between the Six of the Common Market and the other countries of the OEEC, they marked a shift in emphasis between the Six which was strongly needed for the two new European Communities to be properly launched and established as separate units. This was a shift which was noticeable from the ratification of the Treaty of Rome onwards, when the attention of France in particular turned away from the Free Trade Area over to the newly established Common Market. This was a procedure which the European Commission itself took an active part in something the two Commission Memoranda as well as several appearances of the relevant Commissioners in the European Parliamentary Assembly during 1958 and 1959 bears evidence of.

For the Commission, as well as the Six to their national governments, there was a great need to express the difference between the Common Market and the Free Trade Area. It was important for the Community member States to tell their national populations that by joining the Common Market they would get something more, which the nationals of the rest of the Free Trade Area would not get a part in. At the same time, this was the reason why it was important for the United Kingdom to be present from the setting-up of the Community not to be excluded through too many special arrangements created by the Six.

The European Free Trade Area negotiations were the first test for the European Economic Community, as well as for the European Commission itself, of working out a common position among the Six in international negotiations, and presenting itself to the world community with one voice. It was also a good opportunity, early on in its history, to work out and define its own identity, both for the Commission as for the Community as a whole. Although the Free Trade Area negotiations were disrupted before the Community was a year old it became clear

that a free trade area was not what it had been set up for. The Community was more than just the result of economic forces. As Walter Hallstein has pointed out, the means of European integration were economic, but the goals, on the other hand, were "clearly, political".⁶⁸⁰ Furthermore, "the European Community could be seen not only as a European response to political and economic challenges, but, what is much more important, also as a new dynamic in its own right".⁶⁸¹ Under such circumstances a free trade area involving another seven countries at least, would be far too broad for the Community to fulfill its treaty obligations. There was the danger that the Community might dissolve all together "within such a wider, looser, and much more partial scheme [...] ceasing to be what was a then potential political entity [...] becoming a mere commercial arrangement indistinguishable from the free-trade area", and thereby "incapable of giving it the continued political impetus necessary to achieve the benefits of free trade".⁶⁸²

As it became clear to the Community itself, and its member States, that a free trade area was not the right solution, the question of identity had to a large extent been decided. It became evident that the Commission sought a much more united and strengthened Community. It could therefore begin to prioritise the provisions set out in the Treaty. By April 1962 tariffs between member States had been reduced by up to 40% in certain sectors, "the first moves toward the common external tariff were made twelve months in advance", on 31 December 1960, and on 31 December 1961 practically all barriers to movement of industrial goods were abolished, eight years earlier according to the original schedule.⁶⁸³ When the Community moved forward into Stage Two of the Treaties of Rome, in January 1962, it "past the so-called 'point of no return'".⁶⁸⁴

⁶⁸⁰ Hallstein (1962) p. 62.

⁶⁸¹ Hallstein (1962) p. 69.

⁶⁸² Hallstein (1962) p. 73.

⁶⁸³ Hallstein (1962) pp. 48-49.

⁶⁸⁴ Hallstein (1962) p. 56.

As the Free Trade Area negotiations failed, it was as if the Community was given a boost and an even stronger incentive to make its own Treaty and the Common Market work. It had defined its own identity as political before economic, and made the two elements dependent on each other. Another important factor which will explain the success of the Community in its early years was its support from the French President de Gaulle. In 1958 he rejected the Free Trade Area and thereby gave his full support to the EEC. Throughout the 1960s, however, this was going to change quite dramatically. He turned more and more nationalistic and inward looking, trying to make the EEC into an intergovernmental organisation as a "Europe of States". This process culminated in the "empty-chair" crisis in 1965 when France withdrew her representatives from the Community altogether. This was naturally going to mark a change within the Community which took a long time to turn.

One of the main reasons for de Gaulle's "support" of the Community was the Algerian War. He had most of his energies in this camp for the first four years of his presidency, which also happened to be the first four years of the Treaties of Rome in operation. Furthermore, as the Treaties already had been signed, ratified and come into force, it seemed better for President de Gaulle "to let the Communities find their feet, trusting his own ability eventually to shape them in accordance with his own nationalist convictions".⁶⁸⁵ The United Kingdom, on the other hand, was not regarded as "wholly European", due to her Atlantic alliance.⁶⁸⁶ Therefore, as the United Kingdom attempted to set up a free trade area in 1957-58, undermining the importance of the Community, de Gaulle and his supporters became convinced that "Great Britain was seeking uniquely to further her own interests, and that these were in conflict with those of the Six".⁶⁸⁷ It could be argued that it would have been more sensible for de Gaulle "to try to align British policies on his side". This, however, was not going to be possible as "Great Britain

⁶⁸⁵ Lord Gladwyn (1969) *De Gaulle's Europe or Why the General Says No*, p. 56.

⁶⁸⁶ Pickles (1966) *The Uneasy Entente: French Foreign Policy and Franco-British Misunderstandings*, p. 22.

⁶⁸⁷ Pickles (1966) p. 35.

would have been a more equal partner and, therefore, a less satisfactory one",⁶⁸⁸
as de Gaulle saw "in EEC a possible instrument of French power".⁶⁸⁹

⁶⁸⁸ Hartley (1972) *Gaullism: The Rise and Fall of a Political Movement*, p. 209.

⁶⁸⁹ Hartley (1972) p. 213.

CHAPTER VI

CONCLUSION

*"Les hommes placés dans une situation de fait nouvelle, ou dans un système d'obligations différent, adaptent leur comportement et deviennent autres. Ils deviennent meilleurs si le contexte est meilleur: c'est l'histoire toute simple du progrès des civilisations, et c'est l'histoire de la Communauté Européenne."*⁶⁹⁰

1. THE BUILDING OF ADMINISTRATIVE STRUCTURES WITHIN AN ORGANISATION OF POLITICAL LEADERSHIP

1.1 Historical influences

As the quote above indicates, the history of the European Community is to a large extent concerned about the changing of circumstances which again has led to a changing of behaviour of the various actors at all levels. The latter will be better if the former is good. By establishing firstly the ECSC in 1952 and later the EEC and Euratom in 1958, the European States and their peoples were led into a cooperation away from war and destruction, concentrating rather on relations built on interdependence and peace. This had been the idea behind the Monnet Plan which was later followed by statesmen and others of all the original six participating countries. To secure these new relations, and make them last, the building of institutions was regarded, both by Monnet and later by Hallstein, as a crucial element. The institutional framework which was set up with the ECSC, and which has survived for more than forty years, is part of what makes the European Communities unique. Within the institutional framework of the EEC, it was the Commission which was thought to be the driving force of the integration process. To Monnet the Commission was seen as "an independent arbiter of the European

⁶⁹⁰ "People who are placed within new circumstances, or in a system of different obligations, will adopt their behaviours and change. They will improve if the context is good: that is simply the history of the progress of civilization, and it is the history of the European Communities." Own translation. Jean Monnet *Clefs pour l'Action*, p. 20.

interest", while Hallstein regarded it as "the most original and unprecedented of institutions". Edwards and Spence have later added their view of the Commission as "the one permanent factor in an otherwise changing constellation of people and coalitions".⁶⁹¹ Maybe the most characteristic feature of the European Commission has been its lack of predecessors, and together with its variation of tasks, the difficulties with placing it in any previously known group of organisation. The many different roles of the Commission have demanded different types of organisation to be performed by one single administration. Indeed, one could say that "the history of the Commission is one in which it has sought the means of reconciling the different demands laid upon it, with the Member States and their representatives rarely looking on with indifference".⁶⁹² Hereby, we might have established one of the main dilemmas of the European Commission, which, throughout its history, to a large extent has determined its performance. It has been given a number of tasks to perform, stated in the Treaty of Rome, but still depends on the good will and general mood of the member States and their governments.

In this study on the establishment of the European Commission, and in particular the building-up of its administrative structures, it has been necessary to make a study of the only similar type of organisation that existed before it; the High Authority of the ECSC. This was the first of the European Communities to be established, and was motivated by a desire to reach a lasting peace between France and Germany. There were a number of so-called "european movements" of more or less federalist character during this immediate post-war period, and when the Schuman Declaration was launched on 9 May 1950, it seemed only natural for the six countries, France, Germany, Italy and the three Benelux countries, to join together in a common effort to seek prosperity and a higher standard of living. It might have seemed like a highly dubious project but it must have appeared like a better alternative to the future than a possible war on the European continent once again. The same uncertainty was, on the other hand, the reason why a country like

⁶⁹¹ Geoffrey Edwards and David Spence (1994) *The European Commission*, p. 1.

⁶⁹² Edwards and Spence (1994) p. 4.

the United Kingdom did not see the possibility of joining from the start. They were not willing to give up any sovereignty, however little, to a project, or rather an idea, full of uncertainties concerning its success.

The man behind the Schuman Declaration, the Frenchman Jean Monnet, was chosen to become the first President of the High Authority. His approach to the establishment of this institution, as well as the Community as such, was a minimalist one, focusing on flexibility, collegiality and supranationalism. For the administration of the High Authority this was to mean an approach which would be developed according to demand, when and if the demands appeared. Jean Monnet feared the development of an administration that would become too big, bureaucratic and "heavy", with few if any real results to be obtained. Communication both horizontally and vertically was considered as essential with the smallest number of levels possible during the decision-making process. The High Authority was instead thought to be an institution taking political decisions at a supranational level, something which has been shown was to be, at least partly, restrained by the six national governments. The experiences of the High Authority, as we have seen, have shown that it had to consult the Council of Ministers far more often than was theoretically required, according to the Treaty of Paris. Considering the fact that the original plan of Jean Monnet did not include any Council of Ministers at all, critics will claim the ECSC project to have been far too ambitious in a federalist way.

Given its possibilities as well as its limitations, history has shown the High Authority to have developed in different ways, at different times. This has to a great extent depended on the nature of its various presidents. Jean Monnet served mostly during favourable times characterised by real optimism and support for the federal cause. During the first couple of years, as we have seen, it proved easier to get acceptance for Monnet's minimalist approach, something which has been explained above by the fact that the newly created Community also operated within a more narrow field. The people involved were full of enthusiasm, being what we often have referred to as "good Europeans". They functioned reasonably well together as a collegiate body, taking at times decisions similar to that of a political leadership.

During the negotiations between the High Authority and the United Kingdom for the Agreement of Association, the former operated as something similar to a national State. Later on, however, both the personality of the President, as well as the general circumstances and demands, changed. This was going to change the organisation of the High Authority too, focusing on more bureaucratic and technical elements. We have noted how one such element was the establishment of Staff Regulations in 1956.

The administrative apparatus surrounding the High Authority during its early years appears to have been quite small, but still flexible. There were no strict working procedures and its staff did not have the security they were used to from their own national administrations. It was regarded as more important to be flexible, to be able to give the best possible approach to any matter that might arise. This was possible, as we have seen, as long as the staff was willing to work long, unfixed hours, and as long as the work load was relatively small. It might have proved beneficial to the High Authority to have such an administration at its disposal during the initiating period where a certain amount of "trial and error" was necessary in order to find the best possible working methods for this new type of organisation. Nevertheless, it soon fell into a pattern where a more strongly organised structure was demanded, where each office had been given its tasks, separate from each other.

During the autumn of 1952 the High Authority was divided into Working Parties which each represented its own working area. Furthermore, twelve different Divisions and Services were set up.⁶⁹³ With time these Working Parties and Divisions, which could in certain ways be compared with the ministries of a national government, grew in size and work load, and contact between them became gradually more rigid. Later on, we have seen that the same trend appeared within the DGs of the European Commission. As we have seen in Chapter IV above, the Commission established a number of groups, similar to the working parties of the High Authority, with one Commissioner as Chairman, and two to three other

⁶⁹³ Spierenburg and Poidevin (1994) pp. 70-74.

Commissioners as members. However, as Emile Noël has recounted, these groups existed more or less on paper only. They had been an attempt to keep the collegiate, supranational nature of the Commission, where all its Commissioners would be equally informed in all areas. With their responsibilities as overall head of a DG, as well as the weekly meeting of the Commission, the work load became too heavy, with a certain overlapping tendency.

The favourable circumstances that ruled during the setting-up of the ECSC were to change dramatically with France's failure to ratify the EDC on 30 August 1954. Until that day the European integration process had moved gradually forward with the cooperation becoming both closer and deeper. The development went according to predictions of a "spill-over" effect which had been made earlier by the American scholar Ernst B. Haas. However, with the planned integration of the defence sectors of the six member States, accompanied by a Political Community, one seemed to have touched upon certain sensitive strings of national feelings of sovereignty, in France more than anywhere. The period that followed, which has been referred to as the "*relance européenne*", proved, nevertheless, that integration among the six European States was desired, but within sectors where a loss of national sovereignty would be less controversial.

1.2 The Independent role of the European Commission

As we now have identified and analysed the influences of the setting-up of the European Commission, and how this became organised, we will analyse the ways in which the Commission has played an independent role. Furthermore, we will discuss how certain elements have increased the chances of the Commission playing such an independent role. These elements were, firstly, the position taken by the member States towards the Commission as an independent body and their general feeling towards further European integration through the Treaty of Rome. Secondly, the position taken by the Commissioners as a college, along with staff appointed, has to a certain extent determined whether the Commission has been able to act in an independent way or not. A third element has been the roles given to the Commission

in the Treaty of Rome, and how these have been regarded and used by the Commission itself. Last, but not least, there was the role played by the first President of the European Commission, the only President of the EEC Commission in fact, Walter Hallstein. Not only because he was the first one, and the one to determine in many ways the actual organising of the Commission, but also because of his own personality, regarded as a charismatic leader, did he play a considerable role in the attempts of setting up an independent European executive body.

We have argued throughout this thesis that both the High Authority as well as the European Commission were set out to be, and operated as political bodies taking initiatives of real political character. Nevertheless, another argument has been that this has only, to a large extent, been possible with the consent, even if a silent one, of the member State Governments. The High Authority was, according to its Treaty, independent of national considerations, with powers normally only enjoyed by national governments. Decisions were taken by majority vote, and these were directly binding on the enterprises concerned. It even went as far as having powers to raise money by placing levies on production of coal and steel to be paid directly to the High Authority. Its experience, however, was that no integration would happen against the will of the member States and therefore these came to be consulted in the Council of Ministers before the High Authority made its decisions.

Jean Monnet's vision of the High Authority had been that the political role was to be played by the institution itself, whereas the administration surrounding it would play a preparatory and supporting role. This was to work more efficiently with a small administrative apparatus, which in turn would ease the decision-making process. When the European Commission was set up a few years later it shared many similarities with the High Authority. In one area, however, there was a marked difference between the two. In the Treaty of Rome the European Commission and the Council of Ministers had been given a shared responsibility over the executive duties. Hereby, the already strong position of the member States in the ECSC had been formalised.

The European Commission had been set up as a new type of organisation with various different functions to fulfil, normally not seen done by one single organisation before. Its administration, as we have seen, would have to be organised accordingly already from the start, as a contrast to that of the High Authority. One role of the European Commission was that of a political leadership, which it could play through its right and duty to initiate legislation to the Council of Ministers. Also during the Free Trade Area negotiations, which the Commission only entered towards the end, it managed to show real political initiative, during 1959 in particular. As early as June 1958, however, we have found evidence of the Commission having entered the negotiations with its opinions. On 13 June the Commission had sent a Memorandum to the six governments urging these to discuss the institutional problems of the EEC entering into the Free Trade Area. According to the Commission it would be important to establish ways of dealing with the possibility of the EEC and the Free Trade Area having different views. To the Commission it was important that answers to these problems were found at an early stage so as not to put the future of the Community in jeopardy.⁶⁹⁴ It was also the Commission which put the final end to these negotiations, after France had broken them off almost one year earlier. To the Commission it was considered as more important properly to establish the Common Market and to implement the Treaty before entering into associations with third countries, or groups of third countries. Nevertheless, it has been shown, both for the Commission as well as the High Authority before it, that they were always more or less in the hands of the member States. Over the Free Trade Area negotiations the Commission had the full backing of France, which has always been one of the decisive players in this integration process.

Despite the dependence of the European Commission on the member States and their governments, we have shown that it has nevertheless managed to operate

⁶⁹⁴ The document referred to of 13 June 1958 was Memorandum No. 3, Doc. 456/58-F, from the Commission to the six governments. Mentioned in Commission Document COM(58) 178 rev. of 5 September 1958. This was sent in confidentiality to the Council of Ministers before their scheduled meeting in Venice on 18-20 September 1958. CEAB 11/5111.

in an independent and political way on many occasions. One explanation for this has been the fact that the people involved in the beginning had almost all been involved in the negotiations of the Treaties. This way they were all highly committed "Europeans", eager to see some real progress. To explain why the Commission functioned in a rather less political fashion during the late 1960s and 1970s, however, it would be far too general to say that new people were less committed, or committed more to a career than a cause. It has seemed throughout the thesis that the general attitudes of the member States, and possibly some more than others, have mattered more to the functioning of the Commission, and which roles that have been given the most importance.

The independence of the European Commission was furthermore well established during the Free Trade Area negotiations. The Commission started out as being generally favourable to the idea of a free trade area between the EEC and the rest of the OEEC. However, as the so-called "guardian of the Treaty" and "engine of the Community", its general interest above all had to be directed towards the Community as a whole, before entering into associations with third countries. Therefore, the Commission recommended to refuse the Free Trade Area if the objectives of the Treaty were put in jeopardy. Furthermore, it demanded that the Six should enter as one entity, not as six separate countries, with the Commission as the spokesman of the Community. Such strong views, showing a clear vision of a desired future, must show the signs of a body of political initiatives, already during the first few months of 1958. During 1959 the Commission produced two Memoranda where its views of highly political character on a potential free trade area were set out. The dilemma facing the Commission in its daily work was, on the one side, its right and duty to initiate policies, and on the other, its lack of powers to take decisions in the most important areas. To find the right balance, as well as to make the most impact on the situation, it had to be innovative and flexible, in addition to being skilled at improvisation. Innovation and flexibility were certainly good qualities to possess during the initial years without fixed Staff Regulations. What this has meant to the performance of the Commission will never be quite clear, although from personal accounts by Emile Noël, it seems that it made the

Commission more able to establish itself as an independent, political Community institution without being "tied" to too many strict regulations concerning its staff. This again seems to have been possible as the people seeking work in this institution at the time were more concerned about the overall, political goals to be reached.

President Hallstein, as we have established, considered the political elements of the Commission to be of the greatest importance. This was why he believed in building up the administrative structures as soon as possible in order to concentrate on policies later on. What was also important for the Commission to settle as quickly as possible was its independence from the national governments. One example of how this was done was its use of the European Parliamentary Assembly. President Hallstein, in particular, frequently addressed the Assembly with the views and actions to be taken by the Commission, something which gave the Commission a certain supranational element, even if there was a constant balance between satisfying the Assembly, on the one hand, and the member States on the other. As Edwards and Spence have put it: "[I]t would be a misreading of the Commission's role to see it as wholly dependent on the Member States. But clearly, Commission Presidents, even when they have sought to provide leadership, have not always been given the opportunity to do so."⁶⁹⁵ This is a statement which can, to a large extent, be supported, and which, to a certain degree, sums up the conditions under which the Commission operates. It has to be added, nevertheless, the fact that some presidents have had the ability of providing a stronger leadership than others. President Hallstein remains as a particularly strong and charismatic leader of the European Commission in its early days, setting a trend for the future.

The Free Trade Area negotiations were to prove the first opportunity for Hallstein to establish his leadership style and abilities. Already as early as in February 1958 he began, along with the Commissioner for External Relations, Jean Rey, to attend the meetings of the Maudling Committee. At this stage most of the administrative staff of the Commission had not even been appointed. Furthermore,

⁶⁹⁵ Edwards and Spence (1994) p. 5.

the Commission, which entered these negotiations only towards the end, had not been given any particular negotiating powers by the member States. The role it assumed was identified by its president and his team more or less singlehandedly. On 20 March 1958 President Hallstein addressed the European Parliamentary Assembly, announcing the position taken by the Commission on the establishment of the Free Trade Area. It was clear that, although it did not rule out the possibility totally, it had to put the Community and the Common Market first. It seems quite clear that, as the Commission made attempts to establish its independence, it also assumed its role as the "guardian of the Treaty" where the interests of the Community as a whole must come first. Throughout 1958 the Commission President addressed the European Parliamentary Assembly on several occasions, indicating also the views he had on the importance of that institution and of the two working together.

1.3 The competencies of the High Authority and the European Commission from the Treaty of Paris to the Treaty of Maastricht

Under the Treaty of Paris of 18 April 1951, the High Authority, as the first of the European Executives, was given extensive powers, touching directly upon the industries and producers of coal and steel. In the same way, however, one could say that its competencies were restricted by the narrow area in which it could operate.

Article 8 of the Treaty of Paris sets out the overall duty of the High Authority which was to "ensure that the objectives set out in this Treaty are attained in accordance with the provisions thereof". More specific powers were given further down in the Treaty. One of the most direct powers, which has made the High Authority unique ever since, was its right to impose fines and periodic penalty payments (Article 47). Another was its right to impose levies on the production of coal and steel, and to contract loans (Article 49). Although restricted to the industries of coal and steel, these were much stronger and of a more direct character than was given to the European Commission a few years later.

When the Treaty of Rome was signed on 25 March 1957, new relationships were created between the Community and the member States, as well as between these and the executive body, the European Commission. As the name of the Community, the European Economic Community, already indicates, its scope was much broader than that of the ECSC. On the other hand, the competencies of the European Commission were not as "deep" as those of the High Authority. For the administration of the European Commission, compared to that of the High Authority, the former was to need a bigger and possibly more hierarchical structure to be able to administer the envisaged customs union as well as the agricultural policy that was to come.

We have already established as one of the main differences between the ECSC and the EEC the scope of their treaties. Furthermore, one must also point out another difference in the two treaties which has had a great influence on the two executive bodies and their roles. Briefly, one could say that the High Authority enjoyed strong powers in a limited area, whereas the European Commission had weaker powers within a larger area. The Treaty of Paris is what we have called a "*traité loi*". Lindberg has described this as being "a precise statement of *rules* and a machinery for their application".⁶⁹⁶ The Treaty of Rome, on the other hand, has been characterised as a "*traité cadre*", or a framework treaty. The Treaty of Rome is thus a "general statement of goals with a set of institutions and a procedure for their attainment" which "set forth the general basis of economic unification, leaving much of the content vague, but establishing an institutional system with the power to define the future order of things".⁶⁹⁷ One of the main powers granted the European Commission was its right and duty to propose legislation to the Council. Contrary to the High Authority, which could take decisions directly binding on all legal subjects concerning the coal and steel industry, the powers of the Commission were laid down in its ability to influence on the deliberations and decisions of the Council. This aspect is what we earlier have referred to as 'the driving force of the

⁶⁹⁶ Lindberg (1963) p. 27. Italic in original.

⁶⁹⁷ Lindberg (1963) p. 27.

Community'. Another power, of more general character, has been set down in Article 155 of the Treaty of Rome as the duty to "ensure the proper functioning and development of the common market". Several of the various roles and functions of the Commission as discussed under Coombes and Lindberg have derived from this particular article.

Despite the fact that all major decisions were to be taken by the Council based on a proposal from the Commission, there were certain areas in which the Commission could act alone. These were within strictly technical areas concerning safeguard clauses, competition policy, calculation of customs duties, tariff quotas and the administration of the European Social Fund. Furthermore, it had the duty to adopt its own rules of procedure with the view of ensuring its own functioning, according to Article 162 of the Treaty of Rome.⁶⁹⁸ The European Commission, and the EEC as such, had no powers within the fields of foreign policy or defence, and the Commission had "no power to raise revenue from an independent source of finance".⁶⁹⁹

With the signing of the Treaty of Maastricht on 17 February 1992, the European Community took another step forward in the integration process. In addition to the already existing areas covered in the Treaty of Rome, new areas like culture, education and public health have been added, and the Economic and Monetary Union has been introduced. Furthermore, and despite the more intergovernmental character, the Commission was given the non-exclusive right of initiative in Common Foreign and Security Policy, and cooperation rights in Justice and Home Affairs.⁷⁰⁰ The scope of the Commission's functions has thereby been broadly expanded. Nevertheless, its main characteristics, being the monopoly of initiative, guardian of the Treaty and Community law and its supranational administration, are still as important and unique as always. Another aspect of the

⁶⁹⁸ Lindberg (1963) pp. 307-310.

⁶⁹⁹ Coombes (1970) p. 84.

⁷⁰⁰ Svein S. Andersen and Kjell A. Eliassen (1996) *The European Union: How Democratic Is It?* (London: SAGE Publications) p. 131.

Maastricht Treaty, pointed out by Edwards and Spence, has been the Commission's role in relation to the Council, which has become more of a co-player in the decision-making procedure.⁷⁰¹ Furthermore, it seems that "the provisions of the Maastricht Treaty as well as the developments of the last years indicate that the role of a promotional broker is being reinforced. The Commission is thus likely to remain a unique body in a unique institutional set-up."⁷⁰² It was with the knowledge of the elaboration of the European Communities and the coming into force of the Maastricht Treaty that the book by Edwards and Spence was written. We will see below how this has influenced their views on the European Commission, its administration and roles.

2. LITERATURE

2.1 Early literature on the European Commission

The fact that the European Commission can be said to have played so many different roles, executing them all more or less constantly, has inspired a number of studies of many different opinions regarding the roles and functions of this institution. On the whole, however, the main functions of the Commission have been identified by all, although sometimes under different names, or according to a difference of importance. Authors like David Coombes, Jean Siotis, Sabino Cassese and Giacinto della Cananea, as well as Leon N. Lindberg, and the very first Commission President, Walter Hallstein, have all pointed out such roles as initiating and proposing policies and legislation, implementing legislation, and the role as the "guardian of the Treaty", as some of the main characteristics of the European Commission. Jean Siotis, on the other hand, was the one who most strongly stressed the political importance of the diplomatic role of the Commission, whereas Walter Hallstein placed the greatest importance in its role as "honest broker". The latter one could assume would speak from a personal experience as President of the

⁷⁰¹ Edwards and Spence (1994) p. 221. See also Treaty of Maastricht, Articles 189 a-c, 113, 115 and 130, among others.

⁷⁰² Edwards and Spence (1994) p. 221.

Commission during nine years. There was a constant battle between, on the one side, proposing legislation in order to make the Community move forward, and, on the other side, to propose legislation which would have a chance to pass through the Council of Ministers. As someone who was highly involved in this process, Walter Hallstein must, more than any, have felt this battle in his daily work. The following quote may serve as an indicator of this complex situation:

"If the Commissions advance only proposals that the Council may wish to hear, they may in their subservience to the Council forfeit their independence, betray the protection and promotion of Community interests, and become mere traditional governmental commissions. If, on the other hand, the Commission pursue bold yet realistic policies, they may succeed in coaxing the Council along to take such and such action, particularly if they are supported by the Assembly."⁷⁰³

The power of the European Commission to negotiate with third countries, or groups of countries, on behalf of the member States of the Community, established in Articles 228 and 238 of the Treaty of Rome, gave it certain characteristics similar to that of a nation State. The fact that it had been given the sole right and duty to propose and initiate policies and Community legislation gave it, in turn, features similar to those of a national government. Why the Commission has been compared with a national civil service, on the other hand, has been due to its many administrative elements and the way the Commission administration took shape with its DGs and their subdivisions. In a similar structure to that of the High Authority, each DG represented one area of the work executed by the Commission where each Commissioner was given the overall responsibility of one DG. Even if the Commission, according to the Treaty of Rome, was a collegiate body which was to be responsible towards the other institutions and the member States as such, it was considered as more practical to divide the workload into different areas. Consequently, each Commissioner did not have to be constantly up-to-date in all areas but would be informed at the weekly meeting of the Commission every Wednesday. Another element of keeping up with the constantly increasing workload

⁷⁰³ Gerhard Bebr *The balance of power in the European Communities*. Annuaire Européen, V, 53-79, The Hague: Nijhoff, 1959. In: Lindberg (1963) p. 36.

was the use of personal "Cabinets". As the independence of the Commission as a body, as well as that of the individual Commissioner, had been an established factor in the Treaty of Rome, the use of "Cabinets" has been criticized for keeping the Commissioners too much in line with their home governments. More important, however, seems to have been the way the "Cabinets" managed to communicate on a horizontal level between themselves as a significant aid in the daily work of the Commission.

The literature on the European Commission, by the authors Lindberg, Coombes and Siotis in particular, which has been studied throughout this thesis, has played a considerable role in the development of the Commission itself, as well as being of vital importance to any student of this institution during forty years. What we need to establish now is whether their conclusions, different though they are, can still today be said to have some value, and what kind of impact they have had on the development of the Commission. Furthermore, we will contrast this with the more recent book by Edwards and Spence and their findings.

When Lindberg conducted his study of the European Commission, the European integration process of the European Communities was still in its early days, giving him very little experience to lean on. He had observed the development from the Schuman Declaration of 1950 and the setting-up of the High Authority of the ECSC, via the failure of the EDC and EPC and the *"relance europeenne"*, to the setting-up of the EEC and Euratom in 1958. The cooperation seemed only to become deeper and more wide-ranging for each step, and even given a boost from a near crisis. In an attempt to explain and to predict the future development of European integration, the neofunctionalist theory was developed. This was a theory which seemed to fit well with the events since the Schuman Declaration. Given what we know today about what has happened since the mid-1960s onwards, there are few scholars who would give new life to the neofunctionalist theory, even if the cooperation has indeed become even more deep and more wide-ranging over the years. Nevertheless, as the European Commission was a new phenomenon and in an early stage of its development, there might have been a greater need for explanations

and predictions.

The importance placed by Lindberg on the political role played by the European Commission during the years covered in his study can possibly be explained by the favourable and optimistic environment provided by the member State Governments. On the other hand, it has been argued that without the personalities involved in the Commission at the start, the same degree of political leadership could not have been possible. This is why we have devoted considerable space in Chapter IV above to a study of the background of the original Commissioners of 1958. Their strong belief in the European integration process as the most important qualification which they all shared, has made this particular College of Commissioners unique. Authors of this period, as well as key personalities like Emile Noël, have all pointed towards the political leadership of this collegiate body which seems to have functioned as a real team. Noël in particular has given considerable amount of credit to the President Walter Hallstein. Coombes, nevertheless, held the view that the Commission could only have been regarded as a political body if it had had its own politically elected leaders.

When discussing the writings of Leon Lindberg and David Coombes one must bear in mind the times at which they wrote. No one can be completely free of surrounding elements in their assessment, and important events had occurred in the period between the writings of Lindberg and of Coombes. When Lindberg produced his study on the European Commission in 1963, times were optimistic and the EEC still a novelty. The latter wrote at a later stage in 1970, after the "empty chair" crisis and the establishment of a Common Agricultural Policy. The first element showed the large role played by the member State Governments in the integration process, the latter must have clearly shown the need for more hierarchical structures within the European Commission. The more "pessimistic" views on the European Commission as held by Coombes have, nevertheless, not proved to be totally correct. Since the mid-1980s the Community has taken remarkable steps forward towards a more integrated, "supranational" Community.

Not only has it been important to this study to establish the roles and functions of the European Commission, whether this has been given directly by the Treaty, or delegated by the Council of Ministers. Another, and equally important aspect has been to establish whether these roles and functions have been of a political character or merely of a character traditionally found in an international organisation or even in a bureaucracy. In the study made by Coombes, he described the first two functions, the initiative function and the normative function, as the ones giving the Commission its political features, without which he claimed the Commission would turn into an international organisation of the traditional type. Lindberg gave the initiating role a political content where it would have a choice over the direction and speed of the Community as a whole. We have argued that this was what the Commission did when it recommended to break off the Free Trade Area negotiations and instead concentrate on Community policies. During the period of these negotiations when the Commission took part, from the period when it was set up early in 1958 until the end in September 1959, the role as "guardian of the Treaty" was strongly stressed by the Commission. The need to establish an independent position towards the member States, together with its role to speak for the Community as a whole, seems to have made the Free Trade Area negotiations into a perfect opportunity for the European Commission at such an early stage. Through personalities such as President Hallstein and the Commissioner for External Relations, Jean Rey, the Commission seized this opportunity without having been given any particular role to play either by the Council of Ministers or by the national governments.

From Siotis' point of view the Commission would only be able to act in a political way in times of political consensus among the member States. In times of crisis it would turn into a multilateral organisation where each member State would claim for its own national interests first and foremost. Although the two points of view cannot be compared, Emile Noël seems to be in line with Siotis to the extent that he claimed the Commission has turned more multinational in times of crisis.

The fact that Siotis more or less refused to regard the European Communities

and the European Commission as a product of already existing bonds of solidarity between the Six, made him also question the way in which the Commission could operate as a "supranational" executive, or to what extent the Commission could operate independently of the member States. We have seen, during the Free Trade Area negotiations and even to a greater extent after, that in the end the views of the national governments have been decisive to the final actions of the European Communities and thereby to those of the Commission. Nevertheless, throughout the discussions above one must hope that it has been shown that the Commission can, and has, influenced the Council of Ministers to take actions according to what the Commission has regarded as to the best of the Community as a whole. President Hallstein has called this the role as "honest broker" between the interests of the Community and those of the member States. In Coombes' terminology it would be the mediative function. Clearly, it has been a role which the European Commission has had to fulfil with great care to find the right balance between what would be politically accepted by the member States and what would be accepted by the Treaty of Rome.

Coombes criticized what he called the "Lindberg Thesis" with the following question: "[I]s it [the 'Lindberg Thesis'] justified in assuming that it was only the antagonism of the contemporary French government which prevented the Commission from acting as a political leadership?" What was clear to Coombes was that to be able to act as political leaders in relation to the organisation of the Commission, the Commissioners needed to be able to "act as political leaders of the Community itself". Therefore, as "the political legitimacy of the Community must come from the member governments", any failure could not be blamed on the French President de Gaulle alone.⁷⁰⁴ Lindberg, on the other hand, seems to have placed a great deal of importance in the role of the Commission during the period of his study. In his discussion on the acceleration debate of 1960 he claimed that "a decision would not have been achieved without the Commission. The inability of the governments to agree on a precise formula forced them to delegate the task of

⁷⁰⁴ Coombes (1970) pp. 272-273.

formulation to the Commission. None was willing to accept the possibility of a deadlock."⁷⁰⁵

2.2 Recent literature on the European Commission

Between David Coombes' book in 1970 and the present time, very little material has been published devoted solely to the study of the European Commission. The Community underwent a period of low popularity during the late 1960s and the 1970s with the French President de Gaulle showing a less than positive attitude towards the Commission as an independent, political body. The Community was thereby gradually turned more towards intergovernmentalism, making the theories of supranationalism and neofunctionalism seem inadequate. Another important aspect was the fact that its "honeymoon" period now seemed to be over and the main policies of the Treaty of Rome had already been set out. A period of so-called negative integration followed where nothing new needed to be created, only existing elements, such as trade barriers, removed.⁷⁰⁶ The year 1975 saw, furthermore, an agreement on the creation of the European Council,⁷⁰⁷ which has been considered as another step towards intergovernmentalism. Academic interest was now turned towards the Council of Ministers and the European Council, as well as the European Parliament which held direct elections for the first time in 1979. While the late 1950s and early 1960s saw a high degree of academic interest in the Commission in particular, this interest had turned towards the less "supranational" institutions of the

⁷⁰⁵ Lindberg (1963) p. 202. The acceleration debate mentioned above refers to the implementation of the Treaty of Rome which, on 12 May 1960, was decided by the Council of Ministers to be speeded up.

⁷⁰⁶ By "negative integration" is understood "the part of economic integration which consists of the removal of discrimination", in this case removal of barriers that hamper the free flow of goods, capital and labour. In other words, the creation of a common market. With "positive integration", on the other hand, we understand "the formulation and application of coordinated common policies designed to fulfil broad economic and welfare objectives". Coombes (1970) pp. 54-55.

⁷⁰⁷ Agreement was made in December 1974 in Paris, but was not formally constituted until March 1975 in Dublin. Nevertheless, the European Council did not appear in legal texts until the Single European Act of 1986.

Community during the 1970s. From the early 1980s, on the other hand, and the signing of the Single European Act (SEA) in 1986, interest has once again turned towards the European Commission as a result of the Internal Market and the Maastricht Treaty on European Union of 1992.

The latest book, written in the English language, exclusively about the European Commission, was *The European Commission* in 1994. Its editors were Geoffrey Edwards, from the University of Cambridge, and David Spence who is the Head of Training, DG1A in the European Commission. Of a total of 14 contributors to this book, eight were employed by the European Commission itself, enabling them to give an account of the organisation from the inside. As a valid justification for the book, its editors claim in the preface that it is the first "full-length book" since David Coombes published his thorough study in 1970. With so many changes within the European Communities since then, both of deepening as well as widening character, a new study scarcely requires any justification. Nevertheless, as Edwards and Spence point out in Chapter 1 "The Commission in perspective": "Given its importance in the integration process and the controversy that has often surrounded its role, there has been a surprising dearth of academic or other study of the European Commission."⁷⁰⁸ Their purpose was to "explain and guide one through the comitological maze and [...] look at the implications of it all so that one can better understand how the policy-making process is likely to develop".⁷⁰⁹ With the White Paper on the Completion of the Internal Market of 1985, the Single European Act of 1986, and the Commission Presidency of Jacques Delors between 1985 and 1995, a new dynamism seemed to have been created within the Community which resulted in a new academic interest in integration theory and the role of the European Commission within this process.

In a discussion about the various roles of the Commission, Edwards and Spence gave the independence of the Commission, together with its formal and

⁷⁰⁸ Edwards and Spence (1994) p. 1.

⁷⁰⁹ Edwards and Spence (1994) p. x.

informal right of initiative, the greatest significance. This has been the case since the setting-up of the EEC in 1958. In 1988, as the Community celebrated its thirty years, the then Commission President Jacques Delors said in his speech that "the Commission was a 'strategic authority' established [...] to 'guarantee the continuity of the [integration] project despite the political or geopolitical hazards'". It was the role of the Commission, he claimed, "to point 'the way to the goal ahead'".⁷¹⁰ Having this in mind one must point out the dramatic expansion of the Community spheres of action and competencies to include, firstly, areas like environment, health and education. Later on, areas like foreign policy, security and defence, and monetary policy have been included, something which would have been unthinkable even to suggest in the 1950s and 1960s. Nevertheless, if one makes a distinction between the Commission's formal right of initiative, given through Article 155 of the Treaty of Rome, and the power of initiative, it seems clear that the latter has moved towards the Council of Ministers after 1966 and to the European Council from 1975. This was a trend typical of the political mood of the 1970s, which greatly affected the performance of the European Commission. As the editor of *Agence Europe*, Emanuel Gazzo, argued in 1972: "The Commission [was] ... no longer a place where policies were conceived, but an executive secretariat for policies conceived and elaborated elsewhere."⁷¹¹

Apart from the Commission's power of initiative, Edwards and Spence identified several other roles of great importance, corresponding largely to the roles identified by earlier authors. These included its role as the "guardian of the Treaty" and its right and duty to "formulate recommendations or deliver opinions" on Treaty issues at its own discretion. As they said: "Together these clauses provide a justification of the Commission's role as an initiator of policy with responsibilities going beyond those of a secretariat to the Council of Ministers." Other powers were, on the one hand, the Commission's power of decision-making as an organisation, negotiations with other institutions, and, on the other hand, being "the executive of

⁷¹⁰ Edwards and Spence (1994) p. 15.

⁷¹¹ Edwards and Spence (1994) p. 9.

the Community" in implementing rules laid down by the Council, in legislative or other form.

Two opposing views on the role of the Commission were presented by Edwards and Spence. One was where "[T]he Commission is seen as the dynamic engine of the Community's legislation and action, the real symbol of supranational or even federal Community, representing the common interest of the European people." In this case the Council would be the blocking institution, representing national interests and slowing down the integration process. Another view was, in the words of General de Gaulle, "[T]he Commission as the '*aréopage technocratique apatride et irresponsable*'".⁷¹² By this he referred to the centralisation of political power "in a European bureaucracy away from the direct immediate interests of the citizens of Europe". This would be where the Council was seen to represent "the common will of the European peoples since their political position is made legitimate through national elections."⁷¹³ Whichever view one regards as the "right" or the most plausible, one has to acknowledge the close interaction of the Commission and the member States, represented in the Council of Ministers, especially via COREPER. This was a relationship which had already been recognised by Robert Marjolin and Altiero Spinelli, among others, from the setting-up of the Community.⁷¹⁴

In the view of Edwards and Spence the European Commission has, over the years, evolved to become more of a co-player in relation to the Council of Ministers, by which they mean that the Commission "has acted more and more like a promotional broker".⁷¹⁵ The Commission and the Council, they continued, have a unique relationship of mutual dependence, where "neither institution can act

⁷¹² "a technocratic, stateless Areopagus responsible to nobody". Translation from Bond, Smith and Wallace (1996) p. 115.

⁷¹³ Edwards and Spence (1994) p. 203.

⁷¹⁴ Edwards and Spence (1994) p. 5.

⁷¹⁵ Edwards and Spence (1994) p. 221.

without the other".⁷¹⁶ When it comes to the many different roles of the Commission, Edwards and Spence agreed largely with David Coombes in that this would require several different types of organisation within the one. However, the extensive study by David Coombes of the European Commission has only rather briefly been mentioned twice in the book by Edwards and Spence. Despite his more "pessimistic" predictions for the future in a bureaucratic way, what seems like a more likely explanation must be the fact that so many contributors to the book belong inside the Commission. One could possibly expect those to be less interested in academic analysis of their daily work place from 25 years ago.

At the time when Coombes wrote his study on the Commission, there existed several predictions as to how it would develop in the future. In the analysis edited by Edwards and Spence, however, such developments have been possible to study at close hand. As they concluded, the Commission has not "developed into a body which fits the image of a dominating technocracy nor has it been reduced to an expert secretariat". Nevertheless, it has "played such roles in certain policy areas and on particular political occasions".⁷¹⁷

Discussions about the European Commission have tended to concentrate on the balance between political and bureaucratic elements. The two different elements are not normally found side by side within the same organisation as the one would often be considered as contradictory to the other. It has been this characteristic, however, which has made the Commission into such a unique, as well as controversial organisation. These tensions developed already with the High Authority in 1952. It is the nature of the organisation itself, with its many diverse functions, that has been the reason for this. It is also for this reason that the Commission has been able to emphasize different aspects of its organisation throughout its history, corresponding with the general political mood of the member States. Different aspects and functions have been more strongly played out at various times depending

⁷¹⁶ Edwards and Spence (1994) p. 202.

⁷¹⁷ Edwards and Spence (1994) p. 221.

on the surrounding circumstances. During the Free Trade Area negotiations, for example, one could mention the role as "guardian of the Treaty" as one playing a decisive role to the outcome of the negotiations. This was an example where the Commission clearly put the Treaty before associations with other countries, making sure that the provisions of the Treaty would be set out first. In times of more political leadership, however, one might see the value of distinguishing between the College of the Commissioners, where such political leadership has been found, and the more bureaucratic Directorates General and Services of the administration. On the other hand, if one by political leadership understands directly politically elected leaders as we know from the national systems of government, one must conclude that this has never existed in the European Commission. Apart from this, Edwards and Spence argues that in many other respects "the EC bureaucracy [...] resembles any other administration".⁷¹⁸

3. CONCLUDING REMARKS

The approach of this thesis has been a study of whether earlier roles and functions that have been thought of in connection with the European Commission are still valid given the information acquired from "new" material at the Historical Archives of the European Commission, as well as from a personal interview with former Secretary General, Emile Noël. The impression he has given has been that the Commission of 1958-60 acted, more than anything, as an independent body of political initiative. This was, in large, due to the strong leadership executed by its President, Walter Hallstein, with complete support and cooperation received from the rest of the Commission members.

Emile Noël objected, to a certain extent, to many of the definitions and descriptions of the European Commission set out by David Coombes and Jean Siotis in their publications. For someone who has worked and seen the operation daily

⁷¹⁸ Edwards and Spence (1994) p. 175.

from the inside, one could to a certain extent expect him not to be too concerned about this type of academic writing, important though it has been to the development of the Commission. Noël, however, was of the opinion that the European Commission was both a multinational body as well as a political leadership, depending on the surrounding circumstances. A crisis, he claimed, could more easily bring out the multinational aspects. Although agreeing to the existence of largely the same functions, Noël would be more careful in separating one from the other to the same extent as particularly Coombes did in his study. This because one function would never exist separate from the others, operating, as they did, constantly side by side. Siotis, on the other hand, accused the Commission of consisting of national enclaves which would be a hindrance to the Europeanization process. According to Emile Noël such national enclaves hardly existed, and certainly not to a degree which would have turned it into a problem. Nevertheless, accusations did occur towards Hallstein appointing too many Germans among the staff.⁷¹⁹ This, however, is not something to which Emile Noël will agree or which he considers to have been a problem.

Despite his view that the Commission acted highly independently of national governments, very often taking a political initiative, Emile Noël was of the opinion that the Commission administration developed early into a rather "closed" and vertical pattern. The dividing of the Commission into Portfolios, Directorates-General and Divisions, he claimed, might have proved an efficient solution at the start but has not necessarily been the best in all situations later on. This, however, was a decision taken by Hallstein, and the structures were established already during the first three months of 1958, before Emile Noël, the Directors General and other higher officials were appointed. Nevertheless, Emile Noël was able to make a great deal of impact on the openness of the Commission and its administration by establishing weekly meetings between Directors General and between their assistants, in addition to the Wednesday meeting of the Commissioners.⁷²⁰

⁷¹⁹ View expressed by Emile Noël in a conversation in Paris on 12 December 1994.

⁷²⁰ See Chapter IV, 3.3 The Executive Secretary.

The European Commission started out as a rather small group working in a team. As the system with DGs and Directorates became more and more established and staff were appointed, the Commission seems to have developed into a line system where each DG functioned more as a kind of fortress with less contact between them. According to Noël, Hallstein assumed a natural and clear leadership role from the first day. He took charge of the managing and development of the organisation, according to his choice. This was, however, in full agreement with the other members of the Commission and not disputed to any degree by the member States. In Noël's view, it was quite clear that the officials appointed to work in the Commission during 1958 were appointed as "European officials", not as German, French or Dutch. These officials also mostly stayed on in the European Commission without going back to their national administrations.

As we have seen above, the European Commission became to a large extent a copy of the High Authority in the way it was built up, at least at first glance. Going deeper in the research one will find several important differences between the two executive bodies, but one vital element they both shared was the right, and duty, to initiate policies. This, one could argue, has been the element which has separated the European Commission the most from turning into an international organisation or bureaucracy as we traditionally know them. It has also been this which Lindberg, and many with him, has regarded as the driving force of the Community as a whole.

Emile Noël once called the European Commission "*'une administration engagée'*", motivated by a commitment to European integration".⁷²¹ This commitment was seen strongly during the Free Trade Area negotiations between the Six of the EEC and the other members of the OEEC. As we have observed above in Chapter V, the European Commission had always the European integration process of the Six and the setting-up of the Common Market as its overall aim, and therefore recommended to end the negotiations in September 1959. A Free Trade Area where the EEC was to be no more than a member among others could have

⁷²¹ Edwards and Spence (1994) p. 175. "An administration with a commitment." Own translation.

placed this process in jeopardy, turning the Community into a looser, less integrated free trade cooperation. As the discussion in Chapter V has shown, the Free Trade Area negotiations served as a means for the Commission to define itself as an independent political institution, as well as to define its field of priority being the irreversibility of the Treaty of Rome and the fulfillment of its policies. This is a role we have often referred to as the "guardian of the Treaty", set down in Article 155 of the Treaty of Rome. Entering into associations with third countries was necessarily a less important priority at a time when the Community was in its first year of existence.

One could argue that the Commission, during the Free Trade Area negotiations between the Six and the rest of the OEEC (the Seven as they were in the end) managed to play an independent role, taking initiatives and executing, through its President Walter Hallstein, a real political leadership. Evidence of this has been found in the actions of the Commission already from early on in 1958 when it barely had its own staff. By addressing the EPA it stressed the federal and supranational elements, as well as its independence from the national governments.

Its independence was demonstrated once again when the Commission produced a report on the Free Trade Area, ordered by the Council in December 1958. Except for France, the other five member States of the EEC were positive towards this association being set up. Nevertheless, the Commission produced a report which was not altogether in favour. It could be argued that this was a good example of the Commission taking a position on its own, as well as executing the role identified by both Lindberg and Coombes as the "guardian of the Treaty". The Commission had to regard the interests of the Community as a whole as more important than to enter into a broader association with other states, even if some saw this as a possible dividing of Europe. The Six Community States had agreed on the Treaty of Rome and it was therefore to fulfil the provisions set out in that Treaty. It is dangerous to believe that only when the opinion of the Commission varies from that of the Council and the member States has the Commission acted in an independent way, taking a position of its own. In the case of the Free Trade Area

negotiations, however, we have seen how the Commission acted on its own initiative, before having been given a role to play. When, in December 1958, the Council charged the Commission with writing a report on the way in which the negotiations could best be resumed, the Commission quite clearly produced a report seen from its own point of view.

The Commission's role as Mediator, which has been particularly identified by David Coombes, came out quite clearly during the Free Trade Area negotiations. On the one hand it made attempts to reach a common agreement between the Six of the EEC, to be able to speak with one voice as one unit. On the other hand, it also mediated within the intergovernmental setting of the Maudling Committee between the Six and the OEEC countries. As the Commission constantly had to regard the interests of the Community as a whole and the Treaty provisions as more important than any association agreement with third states, another of the Commission roles identified by Coombes appears which was the normative role. Expressions such as "guardian of the Treaty" and "conscience of the Community" have often been applied to the Commission, indicating how the Commission always had to consider the Treaty and the Community before other matters. One result of the Commission's role in the Free Trade Area negotiations seems to have been to make the Six more united and more committed towards the Common Market as their common cause.

A role of the Commission, explicitly spelled out in the Treaty, is the initiating role. The Commission was given the privilege as the only Community institution to be able to propose legislation to the Council of Ministers. This means that the Commission has been given a certain amount of power to determine the direction of the Community, despite the fact that it is the Council taking the decision in the end. Another way of taking initiatives on the policies of the Community was during the Free Trade Area negotiations. Although on a request from the Council, the Commission produced two Memoranda and several reports during 1958, clearly spelling out its own views on the matter. It was furthermore the Second Memorandum from the Commission in September 1959 which finally put an end to the whole plan of a Free Trade Area between the Community of Six and the Seven

of the OEEC. In the First Memorandum the Commission had raised the question about the need for the Free Trade Area rather than suggesting ways and means of resuming the negotiations. In the Second Memorandum it took this one step further by totally denying the need for a free trade area. The Commission had in this case the support of France, whereas the other five member States were all in favour of reaching a positive agreement with the Seven.

When analysing the role played by the European Commission during the Free Trade Area negotiations one must also remember the fact that for the first part of 1958 it did not even have its own administrative staff but was busy setting-up and appointing this. The few people there, however, have been characterised by a total devotion and loyalty to the institution and cause of European integration. At the same time it was able to take active part in negotiations with third States, taking political initiatives and even determine the outcome in the end. The way the member States in the Council of Ministers charged the Commission with the task of producing the reports on the Free Trade Area negotiations can be interpreted as a way of acknowledging the independence of the Commission, and also encouraging it to take an independent position towards the rest of the Community, the member States and the outside world. On the other hand, it must be remembered, as we have discussed above in Chapter V, the fact that the Council itself was internally divided on this issue between France and the other Five. As the Council could not agree on a unanimous policy to pursue towards the OEEC, it seems that the Commission was able to take advantage of this situation to put forward its initiative.

This thesis has aimed at revealing how the European Commission, both as a College of Commissioners and as an administrative organisation, has been able to perform several different roles and functions within the same organisation, more or less at the same time. Through a thorough study of the many elements of the Commission, its original College of Commissioners and the President, its administrative structures with DGs and Directorates, to the establishing of Staff Regulations, we have followed the development of an entirely new type of organisation which has almost all other known types of organisations within it. It has

often been referred to as the "Brussels bureaucracy", with the understanding that it was too big and hierarchical. Compared to the national bureaucracies of the member States, however, it has always been rather small.⁷²²

Another aim of this thesis has been the hope that it will make a contribution to the understanding of the organisational and administrative developments that have taken place within the European Commission from the day it was set up, throughout its history. The study of the material from the Historical Archives of the European Commission has given evidence of the Commission's role and engagement, not only at a technical level, but as much in a political way. It produced numerous letters, memoranda and working papers concerning every aspect of the Community's activities. Its attempt was constantly to argue for the unity of the Six, both within the Community as well as towards third countries. One example, which has been well documented among the archive material was the Free Trade Area negotiations between the Six of the EEC and the rest of the OEEC. Here, the Commission argued for the position of the Community within the new European Economic Association to be as strong and united as possible. This Association should not be among seventeen countries, but rather between eleven states and the Community of six. It was further important to the Commission that the Community would never represent a minority position, but occupy a position corresponding to its weight in the Free Trade Area, which was 57% of the total budget of the OEEC. Another important matter argued by the Commission was that, to give the Six a united front, they should never individually discuss matters of Community concern within the Association. Differences, therefore, ought to be dealt with by the institutions set up by the Treaty of Rome.⁷²³ When it was no longer seen as feasible to safeguard the position of the Community within the Free Trade Area in a way which the European

⁷²² In 1961 there were 1,846 staff positions authorized for the Commission (3,031 in all institutions together). Lindberg (1963) p. 54. In 1992 13,200 officials were employed by the Commission (20,120 totally in the Community) with twice as many member States and a Treaty that had expanded into many new areas. Edwards and Spence (1994) p. 66.

⁷²³ CEE, Commission, Bruxelles, le 5 septembre 1958. COM (58) 178 rev. Confidentiel. CEAB 11/5111.

Commission could defend, the negotiations ended.

The material from the Historical Archives has provided valuable information on the activities of all the Community institutions, their dealings with each other, and with outside organisations and States. By being clear in its messages, the European Commission managed to influence a great deal the development of the Free Trade Area. Despite being the institution which effectively put an end to the negotiations in September 1959, it provided its influence on how it ought to have looked like and operated had it come into being, in particular during September 1958. Several memoranda were circulated by the Commission during this month concerning the institutions of the Association, the transitional stages, and the globalization of quotas.⁷²⁴ Through the many statements provided by the Commission concerning the Community matters, its political line was constantly known by the participating parties as well as the member States. In this way the Commission could try to influence these in the best way possible in its attempt to fulfil the role as "conscience of the Community", "guardian of the Treaty" and a political leadership of the Community as a whole. The direction of the European Economic Community could, in this way, to a large extent, be pointed out by the European Commission. Another element of the greatest importance to the Commission, which we have been able to study among the archive material, was the forming and setting-up of the Commission administration, as well as appointing its staff members.⁷²⁵ Furthermore, documents from the Historical Archives have shown the importance of making the organisational and administrative structures of the three European Communities as identical as possible. This was the case both for the actual dividing of tasks among staff members, as well as for staff regulations. Despite the fact that Staff Regulations

⁷²⁴ Memoranda from the Commission of the EEC: 9 September 1958, COM (58) 187 rev.; 9 September 1958, COM (58) 176 rev.; 9 September 1958, COM (58) 184 rev.; 11 September 1958, COM (58) 186 (rév. 2); 12 September 1958, COM (58) 189 rev.. CEAB 11/5111.

⁷²⁵ See for example "Communauté Economique Européenne, Commission, Secrétariat. Bruxelles, le 5 mars 1958. Confidentiel. Repartition et Composition des Groupes." (40/58-F), (Chapter IV, 3.1), or "Communauté Economique Européenne, Commission. Plan Provisoire de Repartition des Tâches." (1652/2/58-F), (Chapter IV, 3.2).

only came into effect on 1 January 1962, these discussions had been going on since before the European Commission coming into being.⁷²⁶ Only few years into the future, the Merger of the Executives of 1967 was thereby made possible.⁷²⁷

As an illustration of how Emile Noël, during his years as Secretary General of the European Commission, has viewed the operation of this specific Community institution, we have found the following quote. It shows how the Commission is, and has always been, an independent and political body, having at all times to deal with the support, or lack of such, from the national governments.

"Over the years I have become increasingly convinced that this institution is irreplaceable and its role vital. A strong Commission may sometimes annoy one government or other, or even the entire Council but, all things considered, it will be that Commission which best serves both the Community and its Member States. The Commission must be a living force; it must assert itself politically; it must know how to say no so that it can listen more freely; and it must know how to oppose shabby compromises, so that it can subsequently put forward solutions based on agreement within the Community."⁷²⁸

⁷²⁶ See for example "Conference Intergouvernementale pour le Marché Commun et l'Euratom, Secrétariat. Bruxelles, le 2 mars 1957. Ch. Del. 412. Comité des Chefs de Delegation Statut des Fonctionnaires." CEAB 1/1328. (Chapter IV, 6.1)

⁷²⁷ The so-called Merger Treaty establishing a single Council and a single Commission of the European Communities was signed on 8 April 1965 and came into force on 1 July 1967.

⁷²⁸ From the Special Synopsis to mark the departure of Emile Noël from the Commission. Brussels, 18 September 1987. In: A Tribute to Emile Noël (1990) pp. 54-55.

POSTSCRIPT

As the final work has just been done on this thesis, the news has come of the death of M. Emile Noël. He served as the Executive Secretary of the European Commission of the EEC from 1958 until 1967, and the Secretary General of the Commission of the European Communities between 1967 and 1987, which made him the longest serving "member" of the Commission in all its history. As the Secretary General he was able to influence considerably on the work of the Commission from when he was appointed by President Walter Hallstein in March 1958, until his retirement. After he retired, he served as Principal of the European University Institute in Florence, as well as publishing a number of publications and articles on the European Communities and its institutions in particular. All his adult life was dedicated to the cause of European integration. Being one of the most "European" of all his contemporaries, his death will therefore be a great loss.

Personally, I am deeply grateful and indebted to all the help I received through his personal account of the early period of the European Commission. As he was there at the beginning, his contribution is what has made this thesis into what it is. I can only be thankful that I reached him in time to be able to take advantage of such an important source of information on the establishment of the European Commission. All statements and opinions dedicated Emile Noël throughout the thesis has been read and approved by him personally during the spring of 1996.

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EUROPE 1944-1960, COPIE P, Généralités (Questions Internationales), Vol. 172, 173-174, 193.

DE.CE COPIE P, Vol. 627-628.

Documents from the Historical Archives of European Commission:

The following list refers to the documents that have been used from the Historical Archives in Brussels. They consist of letters, minutes from meetings and other working documents produced by the institutions of the European Communities. They have been listed according to the classification system used in the Historical Archives in Brussels. The abbreviation CEAB stands for *Commission des Communautés Européennes Archives Bruxelles*. The number refers to the record group and the serial number for the archival unit.

CEAB 1: Legal Services

CEAB 1, No. 475; CEAB 1, No. 897; CEAB 1, No. 1328; CEAB 1, No. 1341;
CEAB 1, No. 1533; CEAB 1, No. 1537; CEAB 1, No. 1546

CEAB 2: Secretariat-General

CEAB 2, No. 125; CEAB 2, No. 456; CEAB 2, No. 1672; CEAB 2, No. 1730;
CEAB 2, No. 1859; CEAB 2, No. 2237

CEAB 5: External Relations

CEAB 5, No. 322; CEAB 5, No. 387; CEAB 5, No. 505; CEAB 5, No. 539;
CEAB 5, No. 588; CEAB 5, No. 616; CEAB 5, No. 617; CEAB 5, No. 620;
CEAB 5, No. 624; CEAB 5, No. 627; CEAB 5, No. 630; CEAB 5, No. 677;
CEAB 5, No. 712

CEAB 8: Steel

CEAB 8, No. 598

Miscellaneous:

CEAB 9, No. 317; CEAB 11, No. 5108; CEAB 11, No. 5109; CEAB 11, No.
5111; CEAB 11, No. 5112; CEAB 12, No. 194; CEAB 12, No. 473; CEAB 12,
No. 799

The abbreviation BAC refers to any classified material published by the Commissions of the EEC and Euratom respectively on a variety of topics. The same classification system as CEAB has been used.

BAC 1/1967, No. 67; BAC 24/1967, No. 124; BAC 61/1982, No. 24; BAC 61/1982, No. 44; BAC 118/1986, No. 1078; BAC 118/1986, No. 1185; BAC 118/1986, No. 1241; BAC 118/1986, No. 1242; BAC 118/1986, No. 1245; BAC 118/1986, No. 3278; BAC 118/1986, No. 3284

Declaration

This thesis has been composed by myself and consists entirely of my own work.

Henriette C. Piene